

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.
09/843,289	04/24/2001	Antonio Atwater	2005P12928US

EXAMINER
Nguyen, Phuongchau Ba

Response To Reply Under 37 C.F.R. 1.116

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REMARKS

The Examiner is respectfully thanked for the consideration provided to this application. Reconsideration of this application is respectfully requested in light of the foregoing amendments and the following remarks.

Each of claims 26, 29, 31, 35, 37, 41, 47, 51, 54, 59, 61, 63, 67, 69, 73, 74, 77, 79, 82, 84, 86, 90, 92, 96, and 100 has been amended for at least one reason unrelated to patentability, including at least one of: to explicitly present one or more elements implicit in the claim as originally written when viewed in light of the specification, thereby not narrowing the scope of the claim; to detect infringement more easily; to enlarge the scope of infringement; to cover different kinds of infringement (direct, indirect, contributory, induced, and/or importation, etc.); to expedite the issuance of a claim of particular current licensing interest; to target the claim to a party currently interested in licensing certain embodiments; to enlarge the royalty base of the claim; to cover a particular product or person in the marketplace; and/or to target the claim to a particular industry. Claims 25-100 are now pending in this application. Each of claims 25, 46, 58, 75, and 81 are in independent form.

I. The Obviousness Rejections

Each of claims 25-100 was rejected under 35 U.S.C. 103(a) as being unpatentable over various combinations of U.S. Patent No. 6,346,964 ("Rogers"), U.S. Patent No. 5,941,951 ("Day"), U.S. Patent No. 6,324,163 ("Alexanders"), "Techniques for Improving the Capacity of Video on Demand" ("Kalva"), U.S. Patent No. 6,011,782 ("DeSimone"), and/or U.S. Patent No. 5,903,559 ("Acharya"). Each of these rejections is respectfully traversed.

A. Legal Standards

1. *Prima Facie* Criteria for an Obviousness Rejection

Over 40 years ago, in *Graham v. John Deere Co.*, 383 U.S. 1, 148 USPQ 459 (1966), the Supreme Court established factors regarding the factual inquiry required to establish obviousness. The factors include:

1. determining the scope and contents of the prior art;

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2. ascertaining differences between the prior art and the claims at issue;
3. resolving the level of ordinary skill in the pertinent art; and
4. considering objective evidence indicating obviousness or nonobviousness.

The Federal Circuit has applied *Graham's* required factual inquiry in numerous legal precedents that are binding on the USPTO.

It is recognized that most patentable inventions arise from a combination of old elements and often, each element is found in the prior art. *In re Rouffet*, 149 F.3d 1350, 1357 (Fed. Cir. 1998). However, mere identification in the prior art of each element is insufficient to defeat the patentability of the combined subject matter as a whole. *Id.* at 1355, 1357.

Instead, "[t]o establish a *prima facie* case of obviousness, three basic criteria must be met. First, there must be some suggestion or motivation, either in the references themselves or in the knowledge generally available to one of ordinary skill in the art, to modify the reference or to combine reference teachings. Second, there must be a reasonable expectation of success. Finally, the prior art reference (or references when combined) must teach... all the claim limitations." *In re Vaeck*, 947 F.2d 488, 20 USPQ2d 1438 (Fed. Cir. 1991); MPEP 2143.

Moreover, the "Patent Office has the initial duty of supplying the factual basis for its rejection." *In re Warner*, 379 F.2d 1011, 154 USPQ 173, 178 (CCPA 1967), cert. denied, 389 U.S. 1057, *reh'g denied*, 390 U.S. 1000 (1968). "It may not... resort to speculation, unfounded assumptions or hindsight reconstruction to supply deficiencies in its factual basis". *Id.*

It is legal error to "substitute[] supposed *per se* rules for the particularized inquiry required by section 103. It necessarily produces erroneous results." *See, In re Ochiai*, 71 F.3d 1565, 1571, 37 USPQ2d 1127, 1132-33 (Fed. Cir. 1998); *In re Wright*, 343 F.2d 761, 769-770, 145 USPQ 182, 190 (CCPA 1965).

"Once the examiner... carries the burden of making out a *prima facie* case of unpatentability, 'the burden of coming forward with evidence or argument shifts to the applicant.'" *In re Alton*, 76 F.3d 1168, 37 USPQ2d 1578 (Fed. Cir. 1996) (*quoting In re Oetiker*, 977 F.2d at 1445, 24 USPQ2d at 1444).

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2. Claim Construction

Before the *prima facie* obviousness criteria can be applied, the words of each claim must be interpreted. The Federal Circuit, in *Phillips v. AWH Corp.*, 415 F.3d 1303, 75 USPQ2d 1321 (Fed. Cir. 2005) (*en banc*), *cert. denied*, 2006 U.S. LEXIS 1154, 2006 WL 386393, __ US __, 126 S.Ct. 1174, 163 L.Ed.2d 1141 (2006) has clarified that:

1. “[t]he Patent and Trademark Office (‘PTO’) determines the scope of claims in patent applications not solely on the basis of the claim language, but upon giving claims their broadest reasonable construction ‘**in light of the specification as it would be interpreted by one of ordinary skill in the art**’” (*Id.* at 1316);
2. the words of a claim “are generally given their ordinary and customary meaning” (*Id.* at 1312);
3. the ordinary and customary meaning of a claim term is “the meaning that the term would have to a person of ordinary skill in the art in question at the time of the invention, i.e., as of the effective filing date of the patent application” (*Id.* at 1313);
4. “the person of ordinary skill in the art is deemed to read the claim term not only in the context of the particular claim in which the disputed term appears, but **in the context of the entire patent**, including the specification” (*Id.*);
5. even “the context in which a term is used in the asserted claim can be highly instructive” (*Id.* at 1314);
6. “the specification may reveal a special definition given to a claim term by the patentee that differs from the meaning it would otherwise possess. In such cases, **the inventor’s lexicography governs**” (*Id.* at 1316);
7. even “when guidance is not provided in explicit definitional format, **the specification may define claim terms by implication** such that the meaning may be found in or ascertained by a reading of the patent documents” (*Id.* at 1321);
8. an “invention is construed not only in the light of the claims, but also with reference to the file wrapper or prosecution history in the Patent Office” (*Id.* at 1317 (*citing Graham v. John Deere Co.*, 383 U.S. 1, 33 (1966))); and

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9. the “prosecution history... consists of the complete record of the proceedings before the PTO and **includes the prior art cited** during the examination of the patent” (*Id.* at 1317).

The rules established in *Phillips* apply to *ex parte* examination in the USPTO. *See, In re Kumar*, 418 F.2d 1361 (Fed. Cir. 2005).

In the present application, as originally submitted, the word “channel” is implicitly defined at page 5, lines 10-15, which states:

Fig. 1B depicts an overview of a digital programming content distribution system according to a particular embodiment of the present invention. One or more central channel server(s) 150 collect(s) information about available programming services distributed from a multiplicity of content providers 160.

Thus, a “channel” comprises “available programming services distributed from” a “content provider”. Applicant respectfully requests examination of the claims with the word “channel” construed “**in light of the specification as it would be interpreted by one of ordinary skill in the art**” as required by *Phillips*.

3. All Words in a Claim Must Be Considered

“To establish *prima facie* obviousness..., ‘[a]ll words in a claim must be considered....’” MPEP 2143.03, *quoting In re Wilson*, 424 F.2d 1382, 1385, 165 USPQ 494, 496 (CCPA 1970); *see also, In re Royka*, 490 F.2d 981, 180 USPQ 580 (CCPA 1974); *In re Wilder*, 429 F.2d 447, 166 USPQ 545, 548 (CCPA 1970); *In re Angstadt*, 537 F.2d 498, 190 USPQ 214, 217 (CCPA 1976); *In re Geerdes*, 491 F.2d 1260, 180 USPQ 789, 791 (CCPA 1974).

4. Inherency

Inherency “requires that the missing descriptive material is ‘necessarily present,’ not merely probably or possibly present, in the prior art.” *Trintec Indus., Inc. v. Top-U.S.A. Corp.*, 295 F.3d 1292, 1295, 63 USPQ2d 1597, 1599 (Fed. Cir. 2002).

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5. Unfounded Assertions of Knowledge

A bald assertion of knowledge generally available to one of ordinary skill in the art to bridge the evidentiary gap is improper. Such unfounded assertions are not permissible substitutes for evidence. *See, In re Lee*, 277 F.3d 1338, 1435, 61 USPQ2d 1430, 1435 (Fed. Cir. 2002). That is, deficiencies of the cited references can not be remedied by general conclusions about what is basic knowledge or common sense to one of ordinary skill in the art. *In re Zurko*, 258 F.3d 1379, 1385-86 (Fed. Cir. 2001).

6. Motivation or Suggestion to Combine Prior Art References

Under the *Graham* analysis, the “examiner bears the initial burden of factually supporting any *prima facie* conclusion of obviousness.” *See*, MPEP 2142. The requirements for meeting this burden are clear.

To factually support a *prima facie* conclusion of obviousness, an Office Action must clearly and objectively prove “the reasons one of ordinary skill in the art would have been motivated to select the references”. *In re Rouffet*, 149 F.3d 1350, 1359, 47 USPQ2d 1453, 1459 (Fed. Cir. 1998); *In re Johnston*, 435 F.3d 1381 (Fed. Cir. 2006).

Further, “the examiner **must show reasons** that the skilled artisan, **confronted with the same problems** as the inventor and with no knowledge of the claimed invention, **would select the elements** from the cited prior art references for combination **in the manner claimed**” (emphasis added). *In re Rouffet*, 149 F.3d 1350, 1357, 47 USPQ2d 1453, 1458 (Fed. Cir. 1998); *In re Sang-Su Lee*, 277 F.3d 1338, 1342, 61 USPQ2d 1430, 1433 (Fed. Cir. 2002).

To show these reasons, “[p]articlar findings must be made”. *In re Kotzab*, 217 F.3d 1365, 1371, 55 USPQ2d 1313, 1317 (Fed. Cir. 2000). Such factual findings must be supported by “concrete evidence in the record”. *In re Zurko*, 258 F.3d 1379, 1385-86, 59 USPQ2d 1693, 1697 (Fed. Cir. 2001).

Moreover, a showing of combinability must be “clear and particular”. *In re Dembiczak*, 175 F.3d 994, 999, 50 USPQ2d 1614, 161(Fed. Cir. 1999). That strong showing is needed because, “**obviousness requires proof** ‘that the skilled artisan . . . would select the elements

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from the cited prior art references for combination in the manner claimed”. *In re Johnston*, 435 F.3d 1381 (Fed. Cir. 2006) (quotation omitted) (emphasis added).

Thus, the Office Action must clearly, particularly, and objectively prove some “suggestion, motivation, or teaching in the prior art that would have led a person of ordinary skill in the art to”:

“select the references”;

“select the teachings of [the] separate references”; and

“combine [those teachings] in the way that would produce the claimed” subject matter.

In re Johnston, 435 F.3d 1381 (Fed. Cir. 2006) (internal citations omitted). *See also, In re Dance*, 160 F.3d 1339, 1343, 48 USPQ2d 1635, 1637 (Fed. Cir. 1998) (discussing “the test of whether it would have been obvious to select **specific** teachings and combine them as did the applicant”) (emphasis added); and *Interconnect Planning Corp. v. Feil*, 774 F.2d 1132, 1143, 227 USPQ 543, 551 (Fed. Cir. 1985) (“When prior art references require selective combination... to render obvious a subsequent invention, there must be some reason for the combination other than the hindsight gleaned from the invention itself.”). “The absence of . . . a suggestion to combine is dispositive in an obviousness determination.” *Gambro Lundia AB v. Baxter Healthcare Corp.*, 110 F.3d 1573, 1579, 42 USPQ2d 1378, 1383 (Fed. Cir. 1997).

Further, these requirements apply regardless of whether the Office Action relies upon modifying or combining purported teachings.

Although couched in terms of combining teachings found in the prior art, the same inquiry must be carried out in the context of a purported obvious modification of the prior art. The mere fact that the prior art may be modified in the manner suggested by the Examiner does not make the modification obvious unless the prior art suggested the **desirability** of the modification.... It is impermissible to use the claimed invention as an instruction manual or template to piece together the teachings of the prior art so that the claimed invention is rendered obvious. This court has previously stated that one cannot use hindsight

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reconstruction to pick and choose among isolated disclosures in the prior art to deprecated the claimed invention.

In re Fritch, 972 F.2d 1260, 23 USPQ 2d 1780, 1783-1784 (Fed. Cir. 1992) (citing *In re Gorman*, 933 F.2d 982, 987, 18 USPQ2d 1885, 1888 (Fed. Cir. 1991); *Interconnect Planning Corp. v. Feil*, 774 F.2d 1132, 1138, 227 USPQ 543, 547 (Fed. Cir. 1985); and *In re Fine*, 837 F.2d 1071, 1075, 5 USPQ 2d 1596, 1600 (Fed. Cir. 1988) (internal quotations omitted) (emphasis added)).

7. Next Office Action

If an Office Action fails to set forth sufficient facts to provide a *prima facie* basis for the rejections, any future rejection based on the applied reference will necessarily be factually based on an entirely different portion of that reference, and thus will be legally defined as a “new grounds of rejection.” Consequently, any Office Action containing such rejection can not properly be made final. See, *In re Wiechert*, 152 USPQ 247, 251-52 (CCPA 1967) (defining “new ground of rejection” and requiring that “when a rejection is factually based on an entirely different portion of an existing reference the appellant should be afforded an opportunity to make a showing of unobviousness vis-a-vis such portion of the reference”), and *In re Warner*, 379 F.2d 1011, 154 USPQ 173, 178 (CCPA 1967) (the USPTO “has the initial duty of supplying the factual basis for its rejection”).

B. Analysis

1. Claim 25

a. Inherency

The present Office Action states, regarding Rogers, that “receiving from a subscriber unit a request for a list of available channels (programs), the request including information identifying a subscriber (fig.7a, step 701, the identity of the subscriber is inherent in the request so that the server could be able to send back a list of available program-emphasis added).” See, Page 3. No evidence has been presented that the admittedly “missing descriptive material is ‘necessarily present’” in Rogers. Applicant respectfully requests provision of evidence supporting the assertion that “receiving from a subscriber unit a request for a list of available channels

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(programs), the request including information identifying a subscriber (fig.7a, step 701, the identity of the subscriber is inherent in the request so that the server could be able to send back a list of available program-emphasis added)."

To the extent that the present Office Action or any future Office Action intends to rely on inherency to support a claim rejection, Applicant respectfully traverses, respectfully requests provision of proper evidence supporting such rejection, and respectfully requests a detailed explanation of how the "missing descriptive material is necessarily present, not merely probably or possibly present", in any prior art reference cited to support such rejection.

b. *Prima Facie* Criteria

None of the applied portions of the references relied upon in the Office Action, whether considered alone or in combination, establish a *prima facie* case of obviousness.

c. Missing Claim Limitations

Claim 25 states, *inter alia*, yet the applied portions of Rogers fail to teach, "receiving from a subscriber unit a request for **a list of available channels**, the request including information identifying a subscriber and being sent using HTTP protocol". Instead, Rogers allegedly illustrates, at Fig. 7a, step 702, "SWITCH SENDS LIST OF AVAIL. **PROGRAMS**" (emphasis added). Applicant respectfully submits that a "list" of "programs" does not teach "a list of available channels" according to how the word "channel" would be construed "in light of the specification" "by one of ordinary skill in the art".

The applied portions of Day fail to cure at least these deficiencies of the applied portions of Rogers.

The Office Action appears to improperly group claims together in a common rejection without any showing that the rejection is equally applicable to all claims in the group. That is never appropriate. See MPEP 707.07(d). For example, claim 25 states, *inter alia*, yet the present Office Action fails to even allege that any applied portion of any relied upon reference teaches, "sending to the subscriber unit a response to the received request with an indication of

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the identified channels, the response being sent using HTTP protocol and **identifying the IP multicast group assigned to each identified channel**".

Thus, even if there were motivation or suggestion to modify or combine the applied portions of the references relied upon in the Office Action (an assumption that is respectfully traversed), and even if there were a reasonable expectation of success in combining or modifying the applied portions of the references relied upon in the Office Action (another assumption that is respectfully traversed), the applied portions of the references relied upon in the Office Action, **as attempted to be modified and/or combined**, still do not expressly or inherently teach **every** limitation of the independent claims, and consequently fail to establish a *prima facie* case of obviousness. Consequently, for at least the reasons mentioned above, reconsideration and withdrawal of these rejections is respectfully requested.

d. No Motivation or Suggestion to Combine the Applied References

The present Office Action presents **no proof, and** notably **no evidence** whatsoever, of any "suggestion, motivation, or teaching in the prior art that would have led a person of ordinary skill in the art to":

1. "select the references";
2. "select the teachings of [the] separate references"; or
3. "combine [those teachings] in the way that would produce the claimed" subject matter.

Moreover, the present Office Action presents **no proof, and** indeed **no evidence, of anything** "in the prior art as a whole to suggest the **desirability**, and thus the obviousness, of making the **combination**." Instead, the present Office Action merely asserts, at Pages 3 and 4 "it would have been obvious to an artisan to apply Day's teaching to Roger's system with the motivation being to enable user to access or schedule a multimedia data presentation in a more efficient and reliable manner." Applicant respectfully submits that this unfounded assertion fails to provide any evidence of any "suggestion, motivation, or teaching in the prior art that would have led a person of ordinary skill in the art to":

1. "select the references";

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2. "select the teachings of [the] separate references"; or
3. "combine [those teachings] in the way that would produce the claimed" subject matter.

Thus, the Office Action fails to present the required **proof** of obviousness.

Consequently, Applicant respectfully requests withdrawal of the obviousness rejections of claim 25.

e. Conclusion

For at least these reasons, a reconsideration and withdrawal of the rejection of claim 25 is respectfully requested.

2. Claim 26

a. *Prima Facie* Criteria

None of the applied portions of the references relied upon in the Office Action, whether considered alone or in combination, establish a *prima facie* case of obviousness. Since claim 26 depends from claim 25, Applicant incorporates by reference each traversal regarding claim 25, *supra*.

b. No Motivation or Suggestion to Combine the Applied References

The present Office Action presents **no proof, and notably no evidence** whatsoever, of any "suggestion, motivation, or teaching in the prior art that would have led a person of ordinary skill in the art to":

1. "select the references";
2. "select the teachings of [the] separate references"; or
3. "combine [those teachings] in the way that would produce the claimed" subject matter.

Moreover, the present Office Action presents **no proof, and indeed no evidence, of anything** "in the prior art as a whole to suggest the **desirability**, and thus the obviousness, of making the **combination**." Instead, the present Office Action merely asserts, at Page 11 "it would have

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been obvious to an artisan to apply DeSimone's teaching to Rogers's system to provide conference over IP." Applicant respectfully submits that this unfounded assertion fails to provide any evidence of any "suggestion, motivation, or teaching in the prior art that would have led a person of ordinary skill in the art to":

1. "select the references";
2. "select the teachings of [the] separate references"; or
3. "combine [those teachings] in the way that would produce the claimed" subject matter.

c. Conclusion

For at least these reasons, a reconsideration and withdrawal of the rejection of claim 26 is respectfully requested.

3. Claim 27

a. *Prima Facie* Criteria

None of the applied portions of the references relied upon in the Office Action, whether considered alone or in combination, establish a *prima facie* case of obviousness. Since claim 27 depends from claim 25, Applicant incorporates by reference each traversal regarding claim 25, *supra*.

b. Missing Claim Limitations

Claim 27 states, *inter alia*, yet the applied portions of Rogers fail to teach, "wherein the identifying of one or more available channels identifies less than all of the available channels". Instead, Rogers allegedly illustrates, at Fig. 7a, step 703, "USER SELECTS A PROGRAM (SEND TO SWITCH)". Applicant respectfully submits that a "user" that "selects a program" that is sent "to switch" does not teach "wherein the identifying of one or more available channels identifies less than all of the available channels"

The applied portions of Day fail to cure at least these deficiencies of the applied portions of Rogers.

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Thus, even if there were motivation or suggestion to modify or combine the applied portions of the references relied upon in the Office Action (an assumption that is respectfully traversed), and even if there were a reasonable expectation of success in combining or modifying the applied portions of the references relied upon in the Office Action (another assumption that is respectfully traversed), the applied portions of the references relied upon in the Office Action, **as attempted to be modified and/or combined**, still do not expressly or inherently teach **every** limitation of the independent claims, and consequently fail to establish a *prima facie* case of obviousness. Consequently, for at least the reasons mentioned above, reconsideration and withdrawal of these rejections is respectfully requested.

c. No Motivation or Suggestion to Combine the Applied References

The present Office Action presents **no proof, and** notably **no evidence** whatsoever, of any "suggestion, motivation, or teaching in the prior art that would have led a person of ordinary skill in the art to":

1. "select the references";
2. "select the teachings of [the] separate references"; or
3. "combine [those teachings] in the way that would produce the claimed" subject matter.

Moreover, the present Office Action presents **no proof, and** indeed **no evidence, of anything** "in the prior art as a whole to suggest the **desirability**, and thus the obviousness, of making the **combination**" regarding the additional subject matter of claim 27.

d. Conclusion

For at least these reasons, a reconsideration and withdrawal of the rejection of claim 27 is respectfully requested.

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4. Claim 28

a. *Prima Facie* Criteria

None of the applied portions of the references relied upon in the Office Action, whether considered alone or in combination, establish a *prima facie* case of obviousness. Since claim 28 depends from claim 25, Applicant incorporates by reference each traversal regarding claim 25, *supra*.

b. No Motivation or Suggestion to Combine the Applied References

The present Office Action presents **no proof, and** notably **no evidence** whatsoever, of any “suggestion, motivation, or teaching in the prior art that would have led a person of ordinary skill in the art to”:

1. “select the references”;
2. “select the teachings of [the] separate references”; or
3. “combine [those teachings] in the way that would produce the claimed” subject matter.

Moreover, the present Office Action presents **no proof, and** indeed **no evidence, of anything** “in the prior art as a whole to suggest the **desirability**, and thus the obviousness, of making the **combination**.” Instead, the present Office Action merely asserts, at Pages 7-8, “it would have been obvious to an artisan to apply Hari’s teaching Rogers’s system with the motivation being to provide one user requesting a video.” Applicant respectfully submits that this unfounded assertion fails to provide any evidence of any “suggestion, motivation, or teaching in the prior art that would have led a person of ordinary skill in the art to”:

1. “select the references”;
2. “select the teachings of [the] separate references”; or
3. “combine [those teachings] in the way that would produce the claimed” subject matter.

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c. Conclusion

For at least these reasons, a reconsideration and withdrawal of the rejection of claim 28 is respectfully requested.

5. Claim 29

a. *Prima Facie* Criteria

None of the applied portions of the references relied upon in the Office Action, whether considered alone or in combination, establish a *prima facie* case of obviousness. Since claim 29 depends from claim 25, Applicant incorporates by reference each traversal regarding claim 25, *supra*.

b. Missing Claim Limitations

Claim 29 states, *inter alia*, yet the applied portions of Rogers fail to teach, “wherein available channels are provided to the computer system by receiving from a plurality of content providers **indications of channels that are made available by each content provider**”. Instead, Rogers allegedly illustrates, at Fig. 7a, step 702, “SWITCH SENDS LIST OF AVAIL. PROGRAMS”. Applicant respectfully submits that the applied portion of Rogers is silent regarding a “content provider”. Accordingly, Applicant submits that Rogers does not teach, “wherein available channels are provided to the computer system by receiving from a plurality of content providers **indications of channels that are made available by each content provider**”. The applied portions of Day fail to cure at least these deficiencies of the applied portions of Rogers.

Thus, even if there were motivation or suggestion to modify or combine the applied portions of the references relied upon in the Office Action (an assumption that is respectfully traversed), and even if there were a reasonable expectation of success in combining or modifying the applied portions of the references relied upon in the Office Action (another assumption that is respectfully traversed), the applied portions of the references relied upon in the Office Action, **as attempted to be modified and/or combined**, still do not expressly or inherently teach **every** limitation of the independent claims, and consequently fail to establish a

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prima facie case of obviousness. Consequently, for at least the reasons mentioned above, reconsideration and withdrawal of these rejections is respectfully requested.

c. No Motivation or Suggestion to Combine the Applied References

The present Office Action presents **no proof, and** notably **no evidence** whatsoever, of any “suggestion, motivation, or teaching in the prior art that would have led a person of ordinary skill in the art to”:

1. “select the references”;
2. “select the teachings of [the] separate references”; or
3. “combine [those teachings] in the way that would produce the claimed” subject matter.

Moreover, the present Office Action presents **no proof, and** indeed **no evidence, of anything** “in the prior art as a whole to suggest the **desirability**, and thus the obviousness, of making the **combination**” regarding the additional subject matter of claim 29.

d. Conclusion

For at least these reasons, a reconsideration and withdrawal of the rejection of claim 29 is respectfully requested.

6. Claim 30

a. *Prima Facie* Criteria

None of the applied portions of the references relied upon in the Office Action, whether considered alone or in combination, establish a *prima facie* case of obviousness. Since claim 30 depends from claim 29, Applicant incorporates by reference each traversal regarding claim 29, *supra*.

b. Missing Claim Limitations

Claim 30 states, *inter alia*, yet the applied portions of Kalva fail to teach, “wherein an indication that a channel is made available by a content provider is sent using a session

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announcement protocol". Applicant respectfully submits that the applied portion of Kalva does not even mention a "session announcement protocol".

The applied portions of the remaining relied upon references fail to cure at least these deficiencies of the applied portions of Kalva.

Thus, even if there were motivation or suggestion to modify or combine the applied portions of the references relied upon in the Office Action (an assumption that is respectfully traversed), and even if there were a reasonable expectation of success in combining or modifying the applied portions of the references relied upon in the Office Action (another assumption that is respectfully traversed), the applied portions of the references relied upon in the Office Action, **as attempted to be modified and/or combined**, still do not expressly or inherently teach **every** limitation of the independent claims, and consequently fail to establish a *prima facie* case of obviousness. Consequently, for at least the reasons mentioned above, reconsideration and withdrawal of these rejections is respectfully requested.

c. No Motivation or Suggestion to Combine the Applied References

The present Office Action presents **no proof, and** notably **no evidence** whatsoever, of any "suggestion, motivation, or teaching in the prior art that would have led a person of ordinary skill in the art to":

1. "select the references";
2. "select the teachings of [the] separate references"; or
3. "combine [those teachings] in the way that would produce the claimed" subject matter.

Moreover, the present Office Action presents **no proof, and** indeed **no evidence, of anything** "in the prior art as a whole to suggest the **desirability**, and thus the obviousness, of making the **combination**." Instead, the present Office Action merely asserts, at Page 8, "it would have been obvious to an artisan to apply Hari's teaching to Rogers's system with the motivation being to provide a user the flexibility of selecting the content as well as scheduling the program that the user wants to watch without disturbed." Applicant respectfully submits that this unfounded

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assertion fails to provide any evidence of any “suggestion, motivation, or teaching in the prior art that would have led a person of ordinary skill in the art to”:

1. “select the references”;
2. “select the teachings of [the] separate references”; or
3. “combine [those teachings] in the way that would produce the claimed” subject matter.

d. Conclusion

For at least these reasons, a reconsideration and withdrawal of the rejection of claim 30 is respectfully requested.

7. Claim 31

a. *Prima Facie* Criteria

None of the applied portions of the references relied upon in the Office Action, whether considered alone or in combination, establish a *prima facie* case of obviousness. Since claim 31 depends from claim 29, Applicant incorporates by reference each traversal regarding claim 29, *supra*.

b. No Motivation or Suggestion to Combine the Applied References

The present Office Action presents **no proof, and notably no evidence** whatsoever, of any “suggestion, motivation, or teaching in the prior art that would have led a person of ordinary skill in the art to”:

1. “select the references”;
2. “select the teachings of [the] separate references”; or
3. “combine [those teachings] in the way that would produce the claimed” subject matter.

Moreover, the present Office Action presents **no proof, and indeed no evidence, of anything** “in the prior art as a whole to suggest the **desirability**, and thus the obviousness, of making the **combination**.” Instead, the present Office Action merely asserts, at Page 9, “it would have

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been obvious to an artisan to apply Hari's teaching to Rogers's system with the motivation being to provide a user the flexibility of selecting the content as well as scheduling the program that the user wants to watch without disturbed." Applicant respectfully submits that this unfounded assertion fails to provide any evidence of any "suggestion, motivation, or teaching in the prior art that would have led a person of ordinary skill in the art to":

1. "select the references";
2. "select the teachings of [the] separate references"; or
3. "combine [those teachings] in the way that would produce the claimed" subject matter.

c. Conclusion

For at least these reasons, a reconsideration and withdrawal of the rejection of claim 31 is respectfully requested.

8. Claim 32

a. *Prima Facie* Criteria

None of the applied portions of the references relied upon in the Office Action, whether considered alone or in combination, establish a *prima facie* case of obviousness. Since claim 32 depends from claim 31, Applicant incorporates by reference each traversal regarding claim 31, *supra*.

b. No Motivation or Suggestion to Combine the Applied References

The present Office Action presents **no proof, and** notably **no evidence** whatsoever, of any "suggestion, motivation, or teaching in the prior art that would have led a person of ordinary skill in the art to":

1. "select the references";
2. "select the teachings of [the] separate references"; or
3. "combine [those teachings] in the way that would produce the claimed" subject matter.

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Moreover, the present Office Action presents **no proof, and indeed no evidence, of anything** “in the prior art as a whole to suggest the **desirability**, and thus the obviousness, of making the **combination**.” Instead, the present Office Action merely asserts, at Page 11, “it would have been obvious to an artisan to apply DeSimone’s teaching to Rogers’s system with the motivation being to provide real time interactive distribution of multimedia information using the multicast IP service.” Applicant respectfully submits that this unfounded assertion fails to provide any evidence of any “suggestion, motivation, or teaching in the prior art that would have led a person of ordinary skill in the art to”:

1. “select the references”;
2. “select the teachings of [the] separate references”; or
3. “combine [those teachings] in the way that would produce the claimed” subject matter.

c. Conclusion

For at least these reasons, a reconsideration and withdrawal of the rejection of claim 32 is respectfully requested.

9. Claim 33

a. *Prima Facie* Criteria

None of the applied portions of the references relied upon in the Office Action, whether considered alone or in combination, establish a *prima facie* case of obviousness. Since claim 33 depends from claim 31, Applicant incorporates by reference each traversal regarding claim 31, *supra*.

b. No Motivation or Suggestion to Combine the Applied References

The present Office Action presents **no proof, and notably no evidence** whatsoever, of any “suggestion, motivation, or teaching in the prior art that would have led a person of ordinary skill in the art to”:

1. “select the references”;

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2. "select the teachings of [the] separate references"; or
3. "combine [those teachings] in the way that would produce the claimed" subject matter.

Moreover, the present Office Action presents **no proof, and indeed no evidence, of anything** "in the prior art as a whole to suggest the **desirability**, and thus the obviousness, of making the **combination**." Instead, the present Office Action merely asserts, at Page 6, "it would have been obvious to provide data over ATM network unicastly." Applicant respectfully submits that this unfounded assertion fails to provide any evidence of any "suggestion, motivation, or teaching in the prior art that would have led a person of ordinary skill in the art to":

1. "select the references";
2. "select the teachings of [the] separate references"; or
3. "combine [those teachings] in the way that would produce the claimed" subject matter.

c. Conclusion

For at least these reasons, a reconsideration and withdrawal of the rejection of claim 33 is respectfully requested.

10. Claim 34

a. *Prima Facie* Criteria

None of the applied portions of the references relied upon in the Office Action, whether considered alone or in combination, establish a *prima facie* case of obviousness. Since claim 34 depends from claim 31, Applicant incorporates by reference each traversal regarding claim 31, *supra*.

b. Missing Claim Limitations

The Office Action appears to improperly group claims together in a common rejection without any showing that the rejection is equally applicable to all claims in the group. That is never appropriate. See MPEP 707.07(d). For example, claim 34 states, *inter alia*, yet the

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present Office Action fails to even allege that any applied portion of any relied upon reference teaches, "wherein the channel source address is an ATM virtual path and transmission circuit".

Thus, even if there were motivation or suggestion to modify or combine the applied portions of the references relied upon in the Office Action (an assumption that is respectfully traversed), and even if there were a reasonable expectation of success in combining or modifying the applied portions of the references relied upon in the Office Action (another assumption that is respectfully traversed), the applied portions of the references relied upon in the Office Action, **as attempted to be modified and/or combined**, still do not expressly or inherently teach **every** limitation of the independent claims, and consequently fail to establish a *prima facie* case of obviousness. Consequently, for at least the reasons mentioned above, reconsideration and withdrawal of these rejections is respectfully requested.

c. No Motivation or Suggestion to Combine the Applied References

The present Office Action presents **no proof, and** notably **no evidence** whatsoever, of any "suggestion, motivation, or teaching in the prior art that would have led a person of ordinary skill in the art to":

1. "select the references";
2. "select the teachings of [the] separate references"; or
3. "combine [those teachings] in the way that would produce the claimed" subject matter.

Moreover, the present Office Action presents **no proof, and** indeed **no evidence, of anything** "in the prior art as a whole to suggest the **desirability**, and thus the obviousness, of making the **combination**." Instead, the present Office Action merely asserts, at Page 6, "it would have been obvious to provide data over ATM network unicastly." Applicant respectfully submits that this unfounded assertion fails to provide any evidence of any "suggestion, motivation, or teaching in the prior art that would have led a person of ordinary skill in the art to":

1. "select the references";
2. "select the teachings of [the] separate references"; or

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3. "combine [those teachings] in the way that would produce the claimed" subject matter.

d. Conclusion

For at least these reasons, a reconsideration and withdrawal of the rejection of claim 34 is respectfully requested.

11. Claim 35

a. *Prima Facie* Criteria

None of the applied portions of the references relied upon in the Office Action, whether considered alone or in combination, establish a *prima facie* case of obviousness. Since claim 35 depends from claim 25, Applicant incorporates by reference each traversal regarding claim 25, *supra*.

b. No Motivation or Suggestion to Combine the Applied References

The present Office Action presents **no proof, and** notably **no evidence** whatsoever, of any "suggestion, motivation, or teaching in the prior art that would have led a person of ordinary skill in the art to":

1. "select the references";
2. "select the teachings of [the] separate references"; or
3. "combine [those teachings] in the way that would produce the claimed" subject matter.

Moreover, the present Office Action presents **no proof, and** indeed **no evidence, of anything** "in the prior art as a whole to suggest the **desirability**, and thus the obviousness, of making the **combination**." Instead, the present Office Action merely asserts, at Page 12, "it would have been obvious to an artisan to apply DeSimone's teaching to Rogers's system with the motivation being to provide a conference to only the requested client." Applicant respectfully submits that this unfounded assertion fails to provide any evidence of any "suggestion, motivation, or teaching in the prior art that would have led a person of ordinary skill in the art to":

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1. "select the references";
2. "select the teachings of [the] separate references"; or
3. "combine [those teachings] in the way that would produce the claimed" subject matter.

c. Conclusion

For at least these reasons, a reconsideration and withdrawal of the rejection of claim 35 is respectfully requested.

12. Claim 36

a. *Prima Facie* Criteria

None of the applied portions of the references relied upon in the Office Action, whether considered alone or in combination, establish a *prima facie* case of obviousness. Since claim 36 depends from claim 25, Applicant incorporates by reference each traversal regarding claim 25, *supra*.

b. No Motivation or Suggestion to Combine the Applied References

The present Office Action presents **no proof, and** notably **no evidence** whatsoever, of any "suggestion, motivation, or teaching in the prior art that would have led a person of ordinary skill in the art to":

1. "select the references";
2. "select the teachings of [the] separate references"; or
3. "combine [those teachings] in the way that would produce the claimed" subject matter.

Moreover, the present Office Action presents **no proof, and** indeed **no evidence, of anything** "in the prior art as a whole to suggest the **desirability**, and thus the obviousness, of making the **combination**" regarding the additional subject matter of claim 36.

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c. Conclusion

For at least these reasons, a reconsideration and withdrawal of the rejection of claim 36 is respectfully requested.

13. Claim 37

a. *Prima Facie* Criteria

None of the applied portions of the references relied upon in the Office Action, whether considered alone or in combination, establish a *prima facie* case of obviousness. Since claim 37 depends from claim 36, Applicant incorporates by reference each traversal regarding claim 36, *supra*.

b. No Motivation or Suggestion to Combine the Applied References

Claim 37 states, *inter alia*, "wherein the subscriber unit is connected to the computer system via a DSL connection." The present Office Action presents **no proof, and** notably **no evidence** whatsoever, of any "suggestion, motivation, or teaching in the prior art that would have led a person of ordinary skill in the art to":

1. "select the references";
2. "select the teachings of [the] separate references"; or
3. "combine [those teachings] in the way that would produce the claimed" subject matter.

Moreover, the present Office Action presents **no proof, and** indeed **no evidence, of anything** "in the prior art as a whole to suggest the **desirability**, and thus the obviousness, of making the **combination**." Instead, the present Office Action merely asserts, at Page 9, "it would have been obvious to an artisan to apply Hari's teaching to Rogers's system with the motivation being to provide a user the flexibility of selecting the content as well as scheduling the program that the user wants to watch without disturbed." As a substantive matter, Applicant respectfully submits that this unfounded assertion appears to have no relevance to the claimed subject matter. Moreover, Applicant respectfully submits that this unfounded assertion fails to provide

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any evidence of any “suggestion, motivation, or teaching in the prior art that would have led a person of ordinary skill in the art to”:

1. “select the references”;
2. “select the teachings of [the] separate references”; or
3. “combine [those teachings] in the way that would produce the claimed” subject matter.

c. Conclusion

For at least these reasons, a reconsideration and withdrawal of the rejection of claim 37 is respectfully requested.

14. Claim 38

a. *Prima Facie* Criteria

None of the applied portions of the references relied upon in the Office Action, whether considered alone or in combination, establish a *prima facie* case of obviousness. Since claim 38 depends from claim 25, Applicant incorporates by reference each traversal regarding claim 25, *supra*.

b. Missing Claim Limitations

Claim 38 states, *inter alia*, yet the applied portions of Rogers do not teach, “wherein an available channel is a channel whose data is currently being multicasted”. The present Office Action attempts, at Page 5, to apply a nonexistent portion of Rogers in the rejection of claim 38 (“page 310, right column, second paragraph”). Applicant respectfully submits that the present Office Action fails to provide any evidence that any applied portion of any relied upon reference teaches “wherein an available channel is a channel whose data is currently being multicasted”.

Thus, even if there were motivation or suggestion to modify or combine the applied portions of the references relied upon in the Office Action (an assumption that is respectfully traversed), and even if there were a reasonable expectation of success in combining or modifying the applied portions of the references relied upon in the Office Action (another

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assumption that is respectfully traversed), the applied portions of the references relied upon in the Office Action, **as attempted to be modified and/or combined**, still do not expressly or inherently teach **every** limitation of the independent claims, and consequently fail to establish a *prima facie* case of obviousness. Consequently, for at least the reasons mentioned above, reconsideration and withdrawal of these rejections is respectfully requested.

c. No Motivation or Suggestion to Combine the Applied References

The present Office Action presents **no proof, and** notably **no evidence** whatsoever, of any “suggestion, motivation, or teaching in the prior art that would have led a person of ordinary skill in the art to”:

1. “select the references”;
2. “select the teachings of [the] separate references”; or
3. “combine [those teachings] in the way that would produce the claimed” subject matter.

Moreover, the present Office Action presents **no proof, and** indeed **no evidence, of anything** “in the prior art as a whole to suggest the **desirability**, and thus the obviousness, of making the **combination**” regarding the additional subject matter of claim 38.

d. Conclusion

For at least these reasons, a reconsideration and withdrawal of the rejection of claim 38 is respectfully requested.

15. Claim 39

a. Prima Facie Criteria

None of the applied portions of the references relied upon in the Office Action, whether considered alone or in combination, establish a *prima facie* case of obviousness. Since claim 39 depends from claim 25, Applicant incorporates by reference each traversal regarding claim 25, *supra*.

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b. Missing Claim Limitations

The Office Action appears to improperly group claims together in a common rejection without any showing that the rejection is equally applicable to all claims in the group. That is never appropriate. See MPEP 707.07(d). For example, claim 39 states, *inter alia*, yet the present Office Action fails to even allege that any applied portion of any relied upon reference teaches, “wherein the subscriber is identified using a media access control address”.

Thus, even if there were motivation or suggestion to modify or combine the applied portions of the references relied upon in the Office Action (an assumption that is respectfully traversed), and even if there were a reasonable expectation of success in combining or modifying the applied portions of the references relied upon in the Office Action (another assumption that is respectfully traversed), the applied portions of the references relied upon in the Office Action, **as attempted to be modified and/or combined**, still do not expressly or inherently teach **every** limitation of the independent claims, and consequently fail to establish a *prima facie* case of obviousness. Consequently, for at least the reasons mentioned above, reconsideration and withdrawal of these rejections is respectfully requested.

c. No Motivation or Suggestion to Combine the Applied References

The present Office Action presents **no proof, and** notably **no evidence** whatsoever, of any “suggestion, motivation, or teaching in the prior art that would have led a person of ordinary skill in the art to”:

1. “select the references”;
2. “select the teachings of [the] separate references”; or
3. “combine [those teachings] in the way that would produce the claimed” subject matter.

Moreover, the present Office Action presents **no proof, and** indeed **no evidence, of anything** “in the prior art as a whole to suggest the **desirability**, and thus the obviousness, of making the **combination**.” Instead, the present Office Action merely asserts, at Page 11, “it would have been obvious to an artisan to apply DeSimone’s teaching to Rogers’s system with the motivation being to provide real time interactive distribution of multimedia information using the

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multicast IP service.” Applicant respectfully submits that this unfounded assertion fails to provide any evidence of any “suggestion, motivation, or teaching in the prior art that would have led a person of ordinary skill in the art to”:

1. “select the references”;
2. “select the teachings of [the] separate references”; or
3. “combine [those teachings] in the way that would produce the claimed” subject matter.

d. Conclusion

For at least these reasons, a reconsideration and withdrawal of the rejection of claim 39 is respectfully requested.

16. Claim 40

a. *Prima Facie* Criteria

None of the applied portions of the references relied upon in the Office Action, whether considered alone or in combination, establish a *prima facie* case of obviousness. Since claim 40 depends from claim 25, Applicant incorporates by reference each traversal regarding claim 25, *supra*.

b. Missing Claim Limitations

The Office Action appears to improperly group claims together in a common rejection without any showing that the rejection is equally applicable to all claims in the group. That is never appropriate. See MPEP 707.07(d). For example, claim 40 states, *inter alia*, yet the present Office Action fails to even allege that any applied portion of any relied upon reference teaches, “wherein the subscriber is identified using an IP address”.

Thus, even if there were motivation or suggestion to modify or combine the applied portions of the references relied upon in the Office Action (an assumption that is respectfully traversed), and even if there were a reasonable expectation of success in combining or modifying the applied portions of the references relied upon in the Office Action (another

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assumption that is respectfully traversed), the applied portions of the references relied upon in the Office Action, **as attempted to be modified and/or combined**, still do not expressly or inherently teach **every** limitation of the independent claims, and consequently fail to establish a *prima facie* case of obviousness. Consequently, for at least the reasons mentioned above, reconsideration and withdrawal of these rejections is respectfully requested.

c. No Motivation or Suggestion to Combine the Applied References

The present Office Action presents **no proof, and** notably **no evidence** whatsoever, of any “suggestion, motivation, or teaching in the prior art that would have led a person of ordinary skill in the art to”:

1. “select the references”;
2. “select the teachings of [the] separate references”; or
3. “combine [those teachings] in the way that would produce the claimed” subject matter.

Moreover, the present Office Action presents **no proof, and** indeed **no evidence, of anything** “in the prior art as a whole to suggest the **desirability**, and thus the obviousness, of making the **combination**.” Instead, the present Office Action merely asserts, at Page 11, “it would have been obvious to an artisan to apply DeSimone’s teaching to Rogers’s system with the motivation being to provide real time interactive distribution of multimedia information using the multicast IP service.” Applicant respectfully submits that this unfounded assertion fails to provide any evidence of any “suggestion, motivation, or teaching in the prior art that would have led a person of ordinary skill in the art to”:

1. “select the references”;
2. “select the teachings of [the] separate references”; or
3. “combine [those teachings] in the way that would produce the claimed” subject matter.

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d. Conclusion

For at least these reasons, a reconsideration and withdrawal of the rejection of claim 40 is respectfully requested.

17. Claim 41

a. *Prima Facie* Criteria

None of the applied portions of the references relied upon in the Office Action, whether considered alone or in combination, establish a *prima facie* case of obviousness. Since claim 41 depends from claim 25, Applicant incorporates by reference each traversal regarding claim 25, *supra*.

b. Missing Claim Limitations

Claim 41 states, *inter alia*, yet the applied portions of Rogers fail to teach, “providing a subscribed channel list for the subscriber that indicates channels which the subscriber is permitted to access”. Instead, Rogers allegedly illustrates, at Fig. 7a, step 702, “SWITCH SENDS LIST OF AVAIL. **PROGRAMS**” (emphasis added). Applicant respectfully submits that a “list” of “programs” does not teach “channel list” according to how the word “channel” would be construed “in light of the specification” “by one of ordinary skill in the art”. Moreover, the applied portion of Rogers is silent regarding any “subscribed” “list” whatsoever.

The applied portions of Day fail to cure at least these deficiencies of the applied portions of Rogers.

Thus, even if there were motivation or suggestion to modify or combine the applied portions of the references relied upon in the Office Action (an assumption that is respectfully traversed), and even if there were a reasonable expectation of success in combining or modifying the applied portions of the references relied upon in the Office Action (another assumption that is respectfully traversed), the applied portions of the references relied upon in the Office Action, **as attempted to be modified and/or combined**, still do not expressly or inherently teach **every** limitation of the independent claims, and consequently fail to establish a

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prima facie case of obviousness. Consequently, for at least the reasons mentioned above, reconsideration and withdrawal of these rejections is respectfully requested.

c. No Motivation or Suggestion to Combine the Applied References

The present Office Action presents **no proof, and** notably **no evidence** whatsoever, of any “suggestion, motivation, or teaching in the prior art that would have led a person of ordinary skill in the art to”:

1. “select the references”;
2. “select the teachings of [the] separate references”; or
3. “combine [those teachings] in the way that would produce the claimed” subject matter.

Moreover, the present Office Action presents **no proof, and** indeed **no evidence, of anything** “in the prior art as a whole to suggest the **desirability**, and thus the obviousness, of making the **combination**” regarding the additional subject matter of claim 41.

d. Conclusion

For at least these reasons, a reconsideration and withdrawal of the rejection of claim 41 is respectfully requested.

18. Claim 42

a. *Prima Facie* Criteria

None of the applied portions of the references relied upon in the Office Action, whether considered alone or in combination, establish a *prima facie* case of obviousness. Since claim 42 depends from claim 25, Applicant incorporates by reference each traversal regarding claim 25, *supra*.

b. Missing Claim Limitations

Claim 42 states, *inter alia*, yet the applied portions of Rogers fail to teach, “wherein data for a channel is received at the computer system and forwarded to the subscriber unit”. Instead,

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Rogers allegedly illustrates, at Fig. 7a, step 702, "SWITCH SENDS LIST OF AVAIL. **PROGRAMS**" (emphasis added). Applicant respectfully submits that a "list" of "programs" does not teach a "channel" according to how the word "channel" would be construed "in light of the specification" "by one of ordinary skill in the art".

The applied portions of Day fail to cure at least these deficiencies of the applied portions of Rogers.

Thus, even if there were motivation or suggestion to modify or combine the applied portions of the references relied upon in the Office Action (an assumption that is respectfully traversed), and even if there were a reasonable expectation of success in combining or modifying the applied portions of the references relied upon in the Office Action (another assumption that is respectfully traversed), the applied portions of the references relied upon in the Office Action, **as attempted to be modified and/or combined**, still do not expressly or inherently teach **every** limitation of the independent claims, and consequently fail to establish a *prima facie* case of obviousness. Consequently, for at least the reasons mentioned above, reconsideration and withdrawal of these rejections is respectfully requested.

c. No Motivation or Suggestion to Combine the Applied References

The present Office Action presents **no proof, and** notably **no evidence** whatsoever, of any "suggestion, motivation, or teaching in the prior art that would have led a person of ordinary skill in the art to":

1. "select the references";
2. "select the teachings of [the] separate references"; or
3. "combine [those teachings] in the way that would produce the claimed" subject matter.

Moreover, the present Office Action presents **no proof, and** indeed **no evidence, of anything** "in the prior art as a whole to suggest the **desirability**, and thus the obviousness, of making the **combination**" regarding the additional subject matter of claim 42.

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d. Conclusion

For at least these reasons, a reconsideration and withdrawal of the rejection of claim 42 is respectfully requested.

19. Claim 43

a. *Prima Facie* Criteria

None of the applied portions of the references relied upon in the Office Action, whether considered alone or in combination, establish a *prima facie* case of obviousness. Since claim 43 depends from claim 42, Applicant incorporates by reference each traversal regarding claim 42, *supra*.

b. No Motivation or Suggestion to Combine the Applied References

The present Office Action presents **no proof, and** notably **no evidence** whatsoever, of any “suggestion, motivation, or teaching in the prior art that would have led a person of ordinary skill in the art to”:

1. “select the references”;
2. “select the teachings of [the] separate references”; or
3. “combine [those teachings] in the way that would produce the claimed” subject matter.

Moreover, the present Office Action presents **no proof, and** indeed **no evidence, of anything** “in the prior art as a whole to suggest the **desirability**, and thus the obviousness, of making the **combination**.” Instead, the present Office Action merely asserts, at Page 13, “it would have been obvious to an artisan to apply Acharya’s teaching to Rogers’s system with the motivation being to provide transmits data as a series of variable length packets, each having a circuit number that identifies its source and destination address.” Applicant respectfully submits that this unfounded assertion fails to provide any evidence of any “suggestion, motivation, or teaching in the prior art that would have led a person of ordinary skill in the art to”:

1. “select the references”;
2. “select the teachings of [the] separate references”; or

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3. "combine [those teachings] in the way that would produce the claimed" subject matter.

c. Conclusion

For at least these reasons, a reconsideration and withdrawal of the rejection of claim 43 is respectfully requested.

20. Claim 44

a. *Prima Facie* Criteria

None of the applied portions of the references relied upon in the Office Action, whether considered alone or in combination, establish a *prima facie* case of obviousness. Since claim 44 depends from claim 25, Applicant incorporates by reference each traversal regarding claim 25, *supra*.

b. No Motivation or Suggestion to Combine the Applied References

The present Office Action presents **no proof, and** notably **no evidence** whatsoever, of any "suggestion, motivation, or teaching in the prior art that would have led a person of ordinary skill in the art to":

1. "select the references";
2. "select the teachings of [the] separate references"; or
3. "combine [those teachings] in the way that would produce the claimed" subject matter.

Moreover, the present Office Action presents **no proof, and** indeed **no evidence, of anything** "in the prior art as a whole to suggest the **desirability**, and thus the obviousness, of making the **combination**." Instead, the present Office Action merely asserts, at Page 12, "it would have been obvious to an artisan to apply DeSimone's teaching to Rogers's system with the motivation being to provide a conference to only the requested client." Applicant respectfully submits that this unfounded assertion fails to provide any evidence of any "suggestion, motivation, or teaching in the prior art that would have led a person of ordinary skill in the art to":

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1. "select the references";
2. "select the teachings of [the] separate references"; or
3. "combine [those teachings] in the way that would produce the claimed" subject matter.

c. Conclusion

For at least these reasons, a reconsideration and withdrawal of the rejection of claim 44 is respectfully requested.

21. Claim 45

a. *Prima Facie* Criteria

None of the applied portions of the references relied upon in the Office Action, whether considered alone or in combination, establish a *prima facie* case of obviousness. Since claim 45 depends from claim 25, Applicant incorporates by reference each traversal regarding claim 25, *supra*.

b. Missing Claim Limitations

Claim 45 states, *inter alia*, yet the applied portions of Rogers fail to teach, "wherein the request is sent in response to the subscriber requesting to view the **list**". Since claim 45 depends from claim 25, "the list" is a "list of available channels". Instead of teaching this claimed subject matter, Rogers allegedly illustrates, at Fig. 7a, step 706, "SELECTED **PROGRAM** DISPLAYED IN WINDOW" (emphasis added). Applicant respectfully submits that a "program" as recited in step 706 does not teach a "list of available channels".

The applied portions of Day fail to cure at least these deficiencies of the applied portions of Rogers.

Thus, even if there were motivation or suggestion to modify or combine the applied portions of the references relied upon in the Office Action (an assumption that is respectfully traversed), and even if there were a reasonable expectation of success in combining or modifying the applied portions of the references relied upon in the Office Action (another

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assumption that is respectfully traversed), the applied portions of the references relied upon in the Office Action, **as attempted to be modified and/or combined**, still do not expressly or inherently teach **every** limitation of the independent claims, and consequently fail to establish a *prima facie* case of obviousness. Consequently, for at least the reasons mentioned above, reconsideration and withdrawal of these rejections is respectfully requested.

c. No Motivation or Suggestion to Combine the Applied References

The present Office Action presents **no proof, and** notably **no evidence** whatsoever, of any “suggestion, motivation, or teaching in the prior art that would have led a person of ordinary skill in the art to”:

1. “select the references”;
2. “select the teachings of [the] separate references”; or
3. “combine [those teachings] in the way that would produce the claimed” subject matter.

Moreover, the present Office Action presents **no proof, and** indeed **no evidence, of anything** “in the prior art as a whole to suggest the **desirability**, and thus the obviousness, of making the **combination**” regarding the additional subject matter of claim 45.

d. Conclusion

For at least these reasons, a reconsideration and withdrawal of the rejection of claim 45 is respectfully requested.

22. Claim 46

a. Inherency

The present Office Action states, regarding Rogers, that “receiving from a subscriber unit a request for a list of available channels (programs), the request including information identifying a subscriber (fig.7a, step 701, the identity of the subscriber is inherent in the request so that the server could be able to send back a list of available program-emphasis added).” See, Page 3. No evidence has been presented that the admittedly “missing descriptive material is ‘necessarily

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present” in Rogers. Applicant respectfully requests provision of evidence supporting the assertion that “receiving from a subscriber unit a request for a list of available channels (programs), the request including information identifying a subscriber (fig.7a, step 701, the identity of the subscriber is inherent in the request so that the server could be able to send back a list of available program-emphasis added).”

To the extent that the present Office Action or any future Office Action intends to rely on inherency to support a claim rejection, Applicant respectfully traverses, respectfully requests provision of proper evidence supporting such rejection, and respectfully requests a detailed explanation of how the “missing descriptive material is necessarily present, not merely probably or possibly present”, in any prior art reference cited to support such rejection.

b. *Prima Facie* Criteria

None of the applied portions of the references relied upon in the Office Action, whether considered alone or in combination, establish a *prima facie* case of obviousness.

c. Missing Claim Limitations

Claim 46 states, *inter alia*, yet the applied portions of Rogers fail to teach, “receiving from a subscriber unit a request for **a list of available channels**, the request including information identifying a subscriber and being sent using HTTP protocol”. Instead, Rogers allegedly illustrates, at Fig. 7a, step 702, “SWITCH SENDS LIST OF AVAIL. **PROGRAMS**” (emphasis added). Applicant respectfully submits that a “list” of “programs” does not teach “a list of available channels” according to how the word “channel” would be construed “in light of the specification” “by one of ordinary skill in the art”.

The applied portions of Day fail to cure at least these deficiencies of the applied portions of Rogers.

The Office Action appears to improperly group claims together in a common rejection without any showing that the rejection is equally applicable to all claims in the group. That is never appropriate. See MPEP 707.07(d). For example, claim 46 states, *inter alia*, yet the present Office Action fails to even allege that any applied portion of any relied upon reference

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teaches, "sending to the subscriber unit a response with an indication of the identified channels, **the response being sent using HTTP protocol**".

Thus, even if there were motivation or suggestion to modify or combine the applied portions of the references relied upon in the Office Action (an assumption that is respectfully traversed), and even if there were a reasonable expectation of success in combining or modifying the applied portions of the references relied upon in the Office Action (another assumption that is respectfully traversed), the applied portions of the references relied upon in the Office Action, **as attempted to be modified and/or combined**, still do not expressly or inherently teach **every** limitation of the independent claims, and consequently fail to establish a *prima facie* case of obviousness. Consequently, for at least the reasons mentioned above, reconsideration and withdrawal of these rejections is respectfully requested.

d. No Motivation or Suggestion to Combine the Applied References

The present Office Action presents **no proof, and notably no evidence** whatsoever, of any "suggestion, motivation, or teaching in the prior art that would have led a person of ordinary skill in the art to":

1. "select the references";
2. "select the teachings of [the] separate references"; or
3. "combine [those teachings] in the way that would produce the claimed" subject matter.

Moreover, the present Office Action presents **no proof, and indeed no evidence, of anything** "in the prior art as a whole to suggest the **desirability**, and thus the obviousness, of making the **combination**." Instead, the present Office Action merely asserts, at Pages 3 and 4 "it would have been obvious to an artisan to apply Day's teaching to Roger's system with the motivation being to enable user to access or schedule a multimedia data presentation in a more efficient and reliable manner." Applicant respectfully submits that this unfounded assertion fails to provide any evidence of any "suggestion, motivation, or teaching in the prior art that would have led a person of ordinary skill in the art to":

1. "select the references";

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2. "select the teachings of [the] separate references"; or
3. "combine [those teachings] in the way that would produce the claimed" subject matter.

Thus, the Office Action fails to present the required **proof** of obviousness.

Consequently, Applicant respectfully requests withdrawal of the obviousness rejections of claim 46.

e. Conclusion

For at least these reasons, a reconsideration and withdrawal of the rejection of claim 46 is respectfully requested.

23. Claim 47

a. *Prima Facie* Criteria

None of the applied portions of the references relied upon in the Office Action, whether considered alone or in combination, establish a *prima facie* case of obviousness. Since claim 47 depends from claim 46, Applicant incorporates by reference each traversal regarding claim 46, *supra*.

b. Missing Claim Limitations

Claim 47 states, *inter alia*, yet the applied portions of Rogers fail to teach, "wherein the identifying of one or more available channels identifies less than all of the available channels". Instead, Rogers allegedly illustrates, at Fig. 7a, step 703, "USER SELECTS A PROGRAM (SEND TO SWITCH)". Applicant respectfully submits that a "user" that "selects a program" that is sent "to switch" does not teach "wherein the identifying of one or more available channels identifies less than all of the available channels"

The applied portions of Day fail to cure at least these deficiencies of the applied portions of Rogers.

Thus, even if there were motivation or suggestion to modify or combine the applied portions of the references relied upon in the Office Action (an assumption that is respectfully

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traversed), and even if there were a reasonable expectation of success in combining or modifying the applied portions of the references relied upon in the Office Action (another assumption that is respectfully traversed), the applied portions of the references relied upon in the Office Action, **as attempted to be modified and/or combined**, still do not expressly or inherently teach **every** limitation of the independent claims, and consequently fail to establish a *prima facie* case of obviousness. Consequently, for at least the reasons mentioned above, reconsideration and withdrawal of these rejections is respectfully requested.

c. No Motivation or Suggestion to Combine the Applied References

The present Office Action presents **no proof, and** notably **no evidence** whatsoever, of any “suggestion, motivation, or teaching in the prior art that would have led a person of ordinary skill in the art to”:

1. “select the references”;
2. “select the teachings of [the] separate references”; or
3. “combine [those teachings] in the way that would produce the claimed” subject matter.

Moreover, the present Office Action presents **no proof, and** indeed **no evidence, of anything** “in the prior art as a whole to suggest the **desirability**, and thus the obviousness, of making the **combination**” regarding the additional subject matter of claim 47.

d. Conclusion

For at least these reasons, a reconsideration and withdrawal of the rejection of claim 47 is respectfully requested.

24. Claim 48

a. Prima Facie Criteria

None of the applied portions of the references relied upon in the Office Action, whether considered alone or in combination, establish a *prima facie* case of obviousness. Since claim

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48 depends from claim 46, Applicant incorporates by reference each traversal regarding claim 46, *supra*.

b. No Motivation or Suggestion to Combine the Applied References

The present Office Action presents **no proof, and** notably **no evidence** whatsoever, of any “suggestion, motivation, or teaching in the prior art that would have led a person of ordinary skill in the art to”:

1. “select the references”;
2. “select the teachings of [the] separate references”; or
3. “combine [those teachings] in the way that would produce the claimed” subject matter.

Moreover, the present Office Action presents **no proof, and** indeed **no evidence, of anything** “in the prior art as a whole to suggest the **desirability**, and thus the obviousness, of making the **combination**.” Instead, the present Office Action merely asserts, at Pages 7-8, “it would have been obvious to an artisan to apply Hari’s teaching Rogers’s system with the motivation being to provide one user requesting a video.” Applicant respectfully submits that this unfounded assertion fails to provide any evidence of any “suggestion, motivation, or teaching in the prior art that would have led a person of ordinary skill in the art to”:

1. “select the references”;
2. “select the teachings of [the] separate references”; or
3. “combine [those teachings] in the way that would produce the claimed” subject matter.

c. Conclusion

For at least these reasons, a reconsideration and withdrawal of the rejection of claim 48 is respectfully requested.

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25. Claim 49

a. *Prima Facie* Criteria

None of the applied portions of the references relied upon in the Office Action, whether considered alone or in combination, establish a *prima facie* case of obviousness. Since claim 49 depends from claim 46, Applicant incorporates by reference each traversal regarding claim 46, *supra*.

b. Missing Claim Limitations

Claim 49 states, *inter alia*, yet the applied portions of Rogers fail to teach, “wherein available channels are provided to the computer system by receiving from a plurality of content providers **indications of channels that are made available by each content provider**”. Instead, Rogers allegedly illustrates, at Fig. 7a, step 702, “SWITCH SENDS LIST OF AVAIL. PROGRAMS”. Applicant respectfully submits that the applied portion of Rogers is silent regarding a “content provider”. Accordingly, Applicant submits that Rogers does not teach, “wherein available channels are provided to the computer system by receiving from a plurality of content providers **indications of channels that are made available by each content provider**”. The applied portions of Day fail to cure at least these deficiencies of the applied portions of Rogers.

Thus, even if there were motivation or suggestion to modify or combine the applied portions of the references relied upon in the Office Action (an assumption that is respectfully traversed), and even if there were a reasonable expectation of success in combining or modifying the applied portions of the references relied upon in the Office Action (another assumption that is respectfully traversed), the applied portions of the references relied upon in the Office Action, **as attempted to be modified and/or combined**, still do not expressly or inherently teach **every** limitation of the independent claims, and consequently fail to establish a *prima facie* case of obviousness. Consequently, for at least the reasons mentioned above, reconsideration and withdrawal of these rejections is respectfully requested.

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c. No Motivation or Suggestion to Combine the Applied References

The present Office Action presents **no proof, and notably no evidence** whatsoever, of any "suggestion, motivation, or teaching in the prior art that would have led a person of ordinary skill in the art to":

1. "select the references";
2. "select the teachings of [the] separate references"; or
3. "combine [those teachings] in the way that would produce the claimed" subject matter.

Moreover, the present Office Action presents **no proof, and indeed no evidence, of anything** "in the prior art as a whole to suggest the **desirability**, and thus the obviousness, of making the **combination**" regarding the additional subject matter of claim 49.

d. Conclusion

For at least these reasons, a reconsideration and withdrawal of the rejection of claim 49 is respectfully requested.

26. Claim 50

a. *Prima Facie* Criteria

None of the applied portions of the references relied upon in the Office Action, whether considered alone or in combination, establish a *prima facie* case of obviousness. Since claim 50 depends from claim 46, Applicant incorporates by reference each traversal regarding claim 46, *supra*.

b. No Motivation or Suggestion to Combine the Applied References

The present Office Action presents **no proof, and notably no evidence** whatsoever, of any "suggestion, motivation, or teaching in the prior art that would have led a person of ordinary skill in the art to":

1. "select the references";
2. "select the teachings of [the] separate references"; or

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3. “combine [those teachings] in the way that would produce the claimed” subject matter.

Moreover, the present Office Action presents **no proof, and** indeed **no evidence, of anything** “in the prior art as a whole to suggest the **desirability**, and thus the obviousness, of making the **combination**” regarding the additional subject matter of claim 50.

c. Conclusion

For at least these reasons, a reconsideration and withdrawal of the rejection of claim 50 is respectfully requested.

27. Claim 51

a. *Prima Facie* Criteria

None of the applied portions of the references relied upon in the Office Action, whether considered alone or in combination, establish a *prima facie* case of obviousness. Since claim 51 depends from claim 50, Applicant incorporates by reference each traversal regarding claim 50, *supra*.

b. No Motivation or Suggestion to Combine the Applied References

Claim 51 states, *inter alia*, “wherein the subscriber unit is connected to the computer system via a DSL connection.” The present Office Action presents **no proof, and** notably **no evidence** whatsoever, of any “suggestion, motivation, or teaching in the prior art that would have led a person of ordinary skill in the art to”:

1. “select the references”;
2. “select the teachings of [the] separate references”; or
3. “combine [those teachings] in the way that would produce the claimed” subject matter.

Moreover, the present Office Action presents **no proof, and** indeed **no evidence, of anything** “in the prior art as a whole to suggest the **desirability**, and thus the obviousness, of making the **combination**.” Instead, the present Office Action merely asserts, at Page 9, “, it would have

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been obvious to an artisan to apply Hari's teaching to Rogers's system with the motivation being to provide a user the flexibility of selecting the content as well as scheduling the program that the user wants to watch without disturbed." As a substantive matter, Applicant respectfully submits that this unfounded assertion appears to have no relevance to the claimed subject matter. Moreover, Applicant respectfully submits that this unfounded assertion fails to provide any evidence of any "suggestion, motivation, or teaching in the prior art that would have led a person of ordinary skill in the art to":

1. "select the references";
2. "select the teachings of [the] separate references"; or
3. "combine [those teachings] in the way that would produce the claimed" subject matter.

c. Conclusion

For at least these reasons, a reconsideration and withdrawal of the rejection of claim 51 is respectfully requested.

28. Claim 52

a. *Prima Facie* Criteria

None of the applied portions of the references relied upon in the Office Action, whether considered alone or in combination, establish a *prima facie* case of obviousness. Since claim 52 depends from claim 46, Applicant incorporates by reference each traversal regarding claim 46, *supra*.

b. Missing Claim Limitations

The Office Action appears to improperly group claims together in a common rejection without any showing that the rejection is equally applicable to all claims in the group. That is never appropriate. See MPEP 707.07(d). For example, claim 52 states, *inter alia*, yet the present Office Action fails to even allege that any applied portion of any relied upon reference teaches, "wherein the subscriber is identified using a media access control address".

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Thus, even if there were motivation or suggestion to modify or combine the applied portions of the references relied upon in the Office Action (an assumption that is respectfully traversed), and even if there were a reasonable expectation of success in combining or modifying the applied portions of the references relied upon in the Office Action (another assumption that is respectfully traversed), the applied portions of the references relied upon in the Office Action, **as attempted to be modified and/or combined**, still do not expressly or inherently teach **every** limitation of the independent claims, and consequently fail to establish a *prima facie* case of obviousness. Consequently, for at least the reasons mentioned above, reconsideration and withdrawal of these rejections is respectfully requested.

c. No Motivation or Suggestion to Combine the Applied References

The present Office Action presents **no proof, and** notably **no evidence** whatsoever, of any “suggestion, motivation, or teaching in the prior art that would have led a person of ordinary skill in the art to”:

1. “select the references”;
2. “select the teachings of [the] separate references”; or
3. “combine [those teachings] in the way that would produce the claimed” subject matter.

Moreover, the present Office Action presents **no proof, and** indeed **no evidence, of anything** “in the prior art as a whole to suggest the **desirability**, and thus the obviousness, of making the **combination**.” Instead, the present Office Action merely asserts, at Page 11, “it would have been obvious to an artisan to apply DeSimone’s teaching to Rogers’s system with the motivation being to provide real time interactive distribution of multimedia information using the multicast IP service.” Applicant respectfully submits that this unfounded assertion fails to provide any evidence of any “suggestion, motivation, or teaching in the prior art that would have led a person of ordinary skill in the art to”:

1. “select the references”;
2. “select the teachings of [the] separate references”; or

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3. “combine [those teachings] in the way that would produce the claimed” subject matter.

d. Conclusion

For at least these reasons, a reconsideration and withdrawal of the rejection of claim 52 is respectfully requested.

29. Claim 53

a. *Prima Facie* Criteria

None of the applied portions of the references relied upon in the Office Action, whether considered alone or in combination, establish a *prima facie* case of obviousness. Since claim 53 depends from claim 46, Applicant incorporates by reference each traversal regarding claim 46, *supra*.

b. Missing Claim Limitations

The Office Action appears to improperly group claims together in a common rejection without any showing that the rejection is equally applicable to all claims in the group. That is never appropriate. See MPEP 707.07(d). For example, claim 53 states, *inter alia*, yet the present Office Action fails to even allege that any applied portion of any relied upon reference teaches, “wherein the subscriber is identified using an IP address”.

Thus, even if there were motivation or suggestion to modify or combine the applied portions of the references relied upon in the Office Action (an assumption that is respectfully traversed), and even if there were a reasonable expectation of success in combining or modifying the applied portions of the references relied upon in the Office Action (another assumption that is respectfully traversed), the applied portions of the references relied upon in the Office Action, **as attempted to be modified and/or combined**, still do not expressly or inherently teach **every** limitation of the independent claims, and consequently fail to establish a *prima facie* case of obviousness. Consequently, for at least the reasons mentioned above, reconsideration and withdrawal of these rejections is respectfully requested.

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c. No Motivation or Suggestion to Combine the Applied References

The present Office Action presents **no proof, and** notably **no evidence** whatsoever, of any “suggestion, motivation, or teaching in the prior art that would have led a person of ordinary skill in the art to”:

1. “select the references”;
2. “select the teachings of [the] separate references”; or
3. “combine [those teachings] in the way that would produce the claimed” subject matter.

Moreover, the present Office Action presents **no proof, and** indeed **no evidence, of anything** “in the prior art as a whole to suggest the **desirability**, and thus the obviousness, of making the **combination.**” Instead, the present Office Action merely asserts, at Page 11, “it would have been obvious to an artisan to apply DeSimone’s teaching to Rogers’s system with the motivation being to provide real time interactive distribution of multimedia information using the multicast IP service.” Applicant respectfully submits that this unfounded assertion fails to provide any evidence of any “suggestion, motivation, or teaching in the prior art that would have led a person of ordinary skill in the art to”:

1. “select the references”;
2. “select the teachings of [the] separate references”; or
3. “combine [those teachings] in the way that would produce the claimed” subject matter.

d. Conclusion

For at least these reasons, a reconsideration and withdrawal of the rejection of claim 53 is respectfully requested.

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30. Claim 54

a. *Prima Facie* Criteria

None of the applied portions of the references relied upon in the Office Action, whether considered alone or in combination, establish a *prima facie* case of obviousness. Since claim 54 depends from claim 46, Applicant incorporates by reference each traversal regarding claim 46, *supra*.

b. Missing Claim Limitations

Claim 54 states, *inter alia*, yet the applied portions of Rogers fail to teach, “providing a subscribed channel list for the subscriber that indicates channels which the subscriber is permitted to access”. Instead, Rogers allegedly illustrates, at Fig. 7a, step 702, “SWITCH SENDS LIST OF AVAIL. **PROGRAMS**” (emphasis added). Applicant respectfully submits that a “list” of “programs” does not teach “channel list” according to how the word “channel” would be construed “in light of the specification” “by one of ordinary skill in the art”. Moreover, the applied portion of Rogers is silent regarding any “subscribed” “list” whatsoever.

The applied portions of Day fail to cure at least these deficiencies of the applied portions of Rogers.

Thus, even if there were motivation or suggestion to modify or combine the applied portions of the references relied upon in the Office Action (an assumption that is respectfully traversed), and even if there were a reasonable expectation of success in combining or modifying the applied portions of the references relied upon in the Office Action (another assumption that is respectfully traversed), the applied portions of the references relied upon in the Office Action, **as attempted to be modified and/or combined**, still do not expressly or inherently teach **every** limitation of the independent claims, and consequently fail to establish a *prima facie* case of obviousness. Consequently, for at least the reasons mentioned above, reconsideration and withdrawal of these rejections is respectfully requested.

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c. No Motivation or Suggestion to Combine the Applied References

The present Office Action presents **no proof, and notably no evidence** whatsoever, of any “suggestion, motivation, or teaching in the prior art that would have led a person of ordinary skill in the art to”:

1. “select the references”;
2. “select the teachings of [the] separate references”; or
3. “combine [those teachings] in the way that would produce the claimed” subject matter.

Moreover, the present Office Action presents **no proof, and indeed no evidence, of anything** “in the prior art as a whole to suggest the **desirability**, and thus the obviousness, of making the **combination**” regarding the additional subject matter of claim 54.

d. Conclusion

For at least these reasons, a reconsideration and withdrawal of the rejection of claim 54 is respectfully requested.

31. Claim 55

a. *Prima Facie* Criteria

None of the applied portions of the references relied upon in the Office Action, whether considered alone or in combination, establish a *prima facie* case of obviousness. Since claim 55 depends from claim 46, Applicant incorporates by reference each traversal regarding claim 46, *supra*.

b. Missing Claim Limitations

Claim 55 states, *inter alia*, yet the applied portions of Rogers fail to teach, “wherein data for a channel is received at the computer system and forwarded to the subscriber unit”. Instead, Rogers allegedly illustrates, at Fig. 7a, step 702, “SWITCH SENDS LIST OF AVAIL. **PROGRAMS**” (emphasis added). Applicant respectfully submits that a “list” of “programs” does

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not teach a "channel" according to how the word "channel" would be construed "in light of the specification" "by one of ordinary skill in the art".

The applied portions of Day fail to cure at least these deficiencies of the applied portions of Rogers.

Thus, even if there were motivation or suggestion to modify or combine the applied portions of the references relied upon in the Office Action (an assumption that is respectfully traversed), and even if there were a reasonable expectation of success in combining or modifying the applied portions of the references relied upon in the Office Action (another assumption that is respectfully traversed), the applied portions of the references relied upon in the Office Action, **as attempted to be modified and/or combined**, still do not expressly or inherently teach **every** limitation of the independent claims, and consequently fail to establish a *prima facie* case of obviousness. Consequently, for at least the reasons mentioned above, reconsideration and withdrawal of these rejections is respectfully requested.

c. No Motivation or Suggestion to Combine the Applied References

The present Office Action presents **no proof, and** notably **no evidence** whatsoever, of any "suggestion, motivation, or teaching in the prior art that would have led a person of ordinary skill in the art to":

1. "select the references";
2. "select the teachings of [the] separate references"; or
3. "combine [those teachings] in the way that would produce the claimed" subject matter.

Moreover, the present Office Action presents **no proof, and** indeed **no evidence, of anything** "in the prior art as a whole to suggest the **desirability**, and thus the obviousness, of making the **combination**" regarding the additional subject matter of claim 55.

d. Conclusion

For at least these reasons, a reconsideration and withdrawal of the rejection of claim 55 is respectfully requested.

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32. Claim 56

a. *Prima Facie* Criteria

None of the applied portions of the references relied upon in the Office Action, whether considered alone or in combination, establish a *prima facie* case of obviousness. Since claim 56 depends from claim 55, Applicant incorporates by reference each traversal regarding claim 55, *supra*.

b. No Motivation or Suggestion to Combine the Applied References

The present Office Action presents **no proof, and** notably **no evidence** whatsoever, of any “suggestion, motivation, or teaching in the prior art that would have led a person of ordinary skill in the art to”:

1. “select the references”;
2. “select the teachings of [the] separate references”; or
3. “combine [those teachings] in the way that would produce the claimed” subject matter.

Moreover, the present Office Action presents **no proof, and** indeed **no evidence, of anything** “in the prior art as a whole to suggest the **desirability**, and thus the obviousness, of making the **combination.**” Instead, the present Office Action merely asserts, at Page 13, “it would have been obvious to an artisan to apply Acharya’s teaching to Rogers’s system with the motivation being to provide transmits data as a series of variable length packets, each having a circuit number that identifies its source and destination address.” Applicant respectfully submits that this unfounded assertion fails to provide any evidence of any “suggestion, motivation, or teaching in the prior art that would have led a person of ordinary skill in the art to”:

1. “select the references”;
2. “select the teachings of [the] separate references”; or
3. “combine [those teachings] in the way that would produce the claimed” subject matter.

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c. Conclusion

For at least these reasons, a reconsideration and withdrawal of the rejection of claim 56 is respectfully requested.

33. Claim 57

a. *Prima Facie* Criteria

None of the applied portions of the references relied upon in the Office Action, whether considered alone or in combination, establish a *prima facie* case of obviousness. Since claim 57 depends from claim 46, Applicant incorporates by reference each traversal regarding claim 46, *supra*.

b. Missing Claim Limitations

Claim 57 states, *inter alia*, yet the applied portions of Rogers fail to teach, “wherein the request is sent in response to the subscriber requesting to view the **list**”. Since claim 57 depends from claim 46, “the list” is a “list of available channels”. Instead of teaching this claimed subject matter, Rogers allegedly illustrates, at Fig. 7a, step 706, “SELECTED **PROGRAM** DISPLAYED IN WINDOW” (emphasis added). Applicant respectfully submits that a “program” as recited in step 706 does not teach a “list of available channels”.

The applied portions of Day fail to cure at least these deficiencies of the applied portions of Rogers.

Thus, even if there were motivation or suggestion to modify or combine the applied portions of the references relied upon in the Office Action (an assumption that is respectfully traversed), and even if there were a reasonable expectation of success in combining or modifying the applied portions of the references relied upon in the Office Action (another assumption that is respectfully traversed), the applied portions of the references relied upon in the Office Action, **as attempted to be modified and/or combined**, still do not expressly or inherently teach **every** limitation of the independent claims, and consequently fail to establish a *prima facie* case of obviousness. Consequently, for at least the reasons mentioned above, reconsideration and withdrawal of these rejections is respectfully requested.

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c. No Motivation or Suggestion to Combine the Applied References

The present Office Action presents **no proof, and** notably **no evidence** whatsoever, of any “suggestion, motivation, or teaching in the prior art that would have led a person of ordinary skill in the art to”:

1. “select the references”;
2. “select the teachings of [the] separate references”; or
3. “combine [those teachings] in the way that would produce the claimed” subject matter.

Moreover, the present Office Action presents **no proof, and** indeed **no evidence, of anything** “in the prior art as a whole to suggest the **desirability**, and thus the obviousness, of making the **combination**” regarding the additional subject matter of claim 57.

d. Conclusion

For at least these reasons, a reconsideration and withdrawal of the rejection of claim 57 is respectfully requested.

34. Claim 58

a. Inherency

The present Office Action states, regarding Rogers, that “receiving from a subscriber unit a request for a list of available channels (programs), the request including information identifying a subscriber (fig.7a, step 701, the identity of the subscriber is inherent in the request so that the server could be able to send back a list of available program-emphasis added).” See, Page 3. No evidence has been presented that the admittedly “missing descriptive material is ‘necessarily present’” in Rogers. Applicant respectfully requests provision of evidence supporting the assertion that “receiving from a subscriber unit a request for a list of available channels (programs), the request including information identifying a subscriber (fig.7a, step 701, the identity of the subscriber is inherent in the request so that the server could be able to send back a list of available program-emphasis added).”

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To the extent that the present Office Action or any future Office Action intends to rely on inherency to support a claim rejection, Applicant respectfully traverses, respectfully requests provision of proper evidence supporting such rejection, and respectfully requests a detailed explanation of how the “missing descriptive material is necessarily present, not merely probably or possibly present”, in any prior art reference cited to support such rejection.

b. *Prima Facie* Criteria

None of the applied portions of the references relied upon in the Office Action, whether considered alone or in combination, establish a *prima facie* case of obviousness.

c. Missing Claim Limitations

Claim 58 states, *inter alia*, yet the applied portions of Rogers fail to teach, “receiving from a subscriber unit a request for a **listing of available channels**, the request being sent in response to a subscriber indicating to view the listing, the request being sent using HTTP protocol”. Instead, Rogers allegedly illustrates, at Fig. 7a, step 702, “SWITCH SENDS LIST OF AVAIL. **PROGRAMS**” (emphasis added). Applicant respectfully submits that a “list” of “programs” does not teach “a listing of available channels” according to how the word “channel” would be construed “in light of the specification” “by one of ordinary skill in the art”.

The applied portions of Day fail to cure at least these deficiencies of the applied portions of Rogers.

The Office Action appears to improperly group claims together in a common rejection without any showing that the rejection is equally applicable to all claims in the group. That is never appropriate. See MPEP 707.07(d). For example, claim 58 states, *inter alia*, yet the present Office Action fails to even allege that any applied portion of any relied upon reference teaches, “sending to the subscriber unit a response with an indication of the identified channels, the response being sent using HTTP protocol and **identifying the multicast group assigned to each identified channel**”.

Thus, even if there were motivation or suggestion to modify or combine the applied portions of the references relied upon in the Office Action (an assumption that is respectfully

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traversed), and even if there were a reasonable expectation of success in combining or modifying the applied portions of the references relied upon in the Office Action (another assumption that is respectfully traversed), the applied portions of the references relied upon in the Office Action, **as attempted to be modified and/or combined**, still do not expressly or inherently teach **every** limitation of the independent claims, and consequently fail to establish a *prima facie* case of obviousness. Consequently, for at least the reasons mentioned above, reconsideration and withdrawal of these rejections is respectfully requested.

d. No Motivation or Suggestion to Combine the Applied References

The present Office Action presents **no proof, and** notably **no evidence** whatsoever, of any “suggestion, motivation, or teaching in the prior art that would have led a person of ordinary skill in the art to”:

1. “select the references”;
2. “select the teachings of [the] separate references”; or
3. “combine [those teachings] in the way that would produce the claimed” subject matter.

Moreover, the present Office Action presents **no proof, and** indeed **no evidence, of anything** “in the prior art as a whole to suggest the **desirability**, and thus the obviousness, of making the **combination**.” Instead, the present Office Action merely asserts, at Pages 3 and 4 “it would have been obvious to an artisan to apply Day’s teaching to Roger’s system with the motivation being to enable user to access or schedule a multimedia data presentation in a more efficient and reliable manner.” Applicant respectfully submits that this unfounded assertion fails to provide any evidence of any “suggestion, motivation, or teaching in the prior art that would have led a person of ordinary skill in the art to”:

1. “select the references”;
2. “select the teachings of [the] separate references”; or
3. “combine [those teachings] in the way that would produce the claimed” subject matter.

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Thus, the Office Action fails to present the required **proof** of obviousness. Consequently, Applicant respectfully requests withdrawal of the obviousness rejections of claim 58.

e. Conclusion

For at least these reasons, a reconsideration and withdrawal of the rejection of claim 58 is respectfully requested.

35. Claim 59

a. *Prima Facie* Criteria

None of the applied portions of the references relied upon in the Office Action, whether considered alone or in combination, establish a *prima facie* case of obviousness. Since claim 59 depends from claim 58, Applicant incorporates by reference each traversal regarding claim 58, *supra*.

b. No Motivation or Suggestion to Combine the Applied References

The present Office Action presents **no proof, and** notably **no evidence** whatsoever, of any “suggestion, motivation, or teaching in the prior art that would have led a person of ordinary skill in the art to”:

1. “select the references”;
2. “select the teachings of [the] separate references”; or
3. “combine [those teachings] in the way that would produce the claimed” subject matter.

Moreover, the present Office Action presents **no proof, and** indeed **no evidence, of anything** “in the prior art as a whole to suggest the **desirability**, and thus the obviousness, of making the **combination**.” Instead, the present Office Action merely asserts, at Page 11 “it would have been obvious to an artisan to apply DeSimone’s teaching to Rogers’s system to provide conference over IP.” Applicant respectfully submits that this unfounded assertion fails to

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provide any evidence of any “suggestion, motivation, or teaching in the prior art that would have led a person of ordinary skill in the art to”:

1. “select the references”;
2. “select the teachings of [the] separate references”; or
3. “combine [those teachings] in the way that would produce the claimed” subject matter.

c. Conclusion

For at least these reasons, a reconsideration and withdrawal of the rejection of claim 59 is respectfully requested.

36. Claim 60

a. *Prima Facie* Criteria

None of the applied portions of the references relied upon in the Office Action, whether considered alone or in combination, establish a *prima facie* case of obviousness. Since claim 60 depends from claim 58, Applicant incorporates by reference each traversal regarding claim 58, *supra*.

b. No Motivation or Suggestion to Combine the Applied References

The present Office Action presents **no proof, and** notably **no evidence** whatsoever, of any “suggestion, motivation, or teaching in the prior art that would have led a person of ordinary skill in the art to”:

1. “select the references”;
2. “select the teachings of [the] separate references”; or
3. “combine [those teachings] in the way that would produce the claimed” subject matter.

Moreover, the present Office Action presents **no proof, and** indeed **no evidence, of anything** “in the prior art as a whole to suggest the **desirability**, and thus the obviousness, of making the **combination**.” Instead, the present Office Action merely asserts, at Pages 7-8, “it would have

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been obvious to an artisan to apply Hari's teaching Rogers's system with the motivation being to provide one user requesting a video." Applicant respectfully submits that this unfounded assertion fails to provide any evidence of any "suggestion, motivation, or teaching in the prior art that would have led a person of ordinary skill in the art to":

1. "select the references";
2. "select the teachings of [the] separate references"; or
3. "combine [those teachings] in the way that would produce the claimed" subject matter.

c. Conclusion

For at least these reasons, a reconsideration and withdrawal of the rejection of claim 60 is respectfully requested.

37. Claim 61

a. *Prima Facie* Criteria

None of the applied portions of the references relied upon in the Office Action, whether considered alone or in combination, establish a *prima facie* case of obviousness. Since claim 61 depends from claim 58, Applicant incorporates by reference each traversal regarding claim 58, *supra*.

b. Missing Claim Limitations

Claim 61 states, *inter alia*, yet the applied portions of Rogers fail to teach, "wherein available channels are provided to the computer system by receiving from a plurality of content providers **indications of channels that are made available by each content provider**". Instead, Rogers allegedly illustrates, at Fig. 7a, step 702, "SWITCH SENDS LIST OF AVAIL. PROGRAMS". Applicant respectfully submits that the applied portion of Rogers is silent regarding a "content provider". Accordingly, Applicant submits that Rogers does not teach, "wherein available channels are provided to the computer system by receiving from a plurality of content providers **indications of channels that are made available by each content**

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provider". The applied portions of Day fail to cure at least these deficiencies of the applied portions of Rogers.

Thus, even if there were motivation or suggestion to modify or combine the applied portions of the references relied upon in the Office Action (an assumption that is respectfully traversed), and even if there were a reasonable expectation of success in combining or modifying the applied portions of the references relied upon in the Office Action (another assumption that is respectfully traversed), the applied portions of the references relied upon in the Office Action, **as attempted to be modified and/or combined**, still do not expressly or inherently teach **every** limitation of the independent claims, and consequently fail to establish a *prima facie* case of obviousness. Consequently, for at least the reasons mentioned above, reconsideration and withdrawal of these rejections is respectfully requested.

c. No Motivation or Suggestion to Combine the Applied References

The present Office Action presents **no proof, and** notably **no evidence** whatsoever, of any "suggestion, motivation, or teaching in the prior art that would have led a person of ordinary skill in the art to":

1. "select the references";
2. "select the teachings of [the] separate references"; or
3. "combine [those teachings] in the way that would produce the claimed" subject matter.

Moreover, the present Office Action presents **no proof, and** indeed **no evidence, of anything** "in the prior art as a whole to suggest the **desirability**, and thus the obviousness, of making the **combination**" regarding the additional subject matter of claim 61.

d. Conclusion

For at least these reasons, a reconsideration and withdrawal of the rejection of claim 61 is respectfully requested.

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38. Claim 62

a. *Prima Facie* Criteria

None of the applied portions of the references relied upon in the Office Action, whether considered alone or in combination, establish a *prima facie* case of obviousness. Since claim 62 depends from claim 61, Applicant incorporates by reference each traversal regarding claim 61, *supra*.

b. Missing Claim Limitations

Claim 62 states, *inter alia*, yet the applied portions of Kalva fail to teach, “wherein an indication that a channel is made available by a content provider is sent using a session announcement protocol”. Applicant respectfully submits that the applied portion of Kalva does not even mention a “session announcement protocol”.

The applied portions of the remaining relied upon references fail to cure at least these deficiencies of the applied portions of Kalva.

Thus, even if there were motivation or suggestion to modify or combine the applied portions of the references relied upon in the Office Action (an assumption that is respectfully traversed), and even if there were a reasonable expectation of success in combining or modifying the applied portions of the references relied upon in the Office Action (another assumption that is respectfully traversed), the applied portions of the references relied upon in the Office Action, **as attempted to be modified and/or combined**, still do not expressly or inherently teach **every** limitation of the independent claims, and consequently fail to establish a *prima facie* case of obviousness. Consequently, for at least the reasons mentioned above, reconsideration and withdrawal of these rejections is respectfully requested.

c. No Motivation or Suggestion to Combine the Applied References

The present Office Action presents **no proof, and notably no evidence** whatsoever, of any “suggestion, motivation, or teaching in the prior art that would have led a person of ordinary skill in the art to”:

1. “select the references”;

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2. "select the teachings of [the] separate references"; or
3. "combine [those teachings] in the way that would produce the claimed" subject matter.

Moreover, the present Office Action presents **no proof, and indeed no evidence, of anything** "in the prior art as a whole to suggest the **desirability**, and thus the obviousness, of making the **combination**." Instead, the present Office Action merely asserts, at Page 8, "it would have been obvious to an artisan to apply Hari's teaching to Rogers's system with the motivation being to provide a user the flexibility of selecting the content as well as scheduling the program that the user wants to watch without disturbed." Applicant respectfully submits that this unfounded assertion fails to provide any evidence of any "suggestion, motivation, or teaching in the prior art that would have led a person of ordinary skill in the art to":

1. "select the references";
2. "select the teachings of [the] separate references"; or
3. "combine [those teachings] in the way that would produce the claimed" subject matter.

d. Conclusion

For at least these reasons, a reconsideration and withdrawal of the rejection of claim 62 is respectfully requested.

39. Claim 63

a. *Prima Facie* Criteria

None of the applied portions of the references relied upon in the Office Action, whether considered alone or in combination, establish a *prima facie* case of obviousness. Since claim 63 depends from claim 61, Applicant incorporates by reference each traversal regarding claim 61, *supra*.

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b. No Motivation or Suggestion to Combine the Applied References

The present Office Action presents **no proof, and** notably **no evidence** whatsoever, of any “suggestion, motivation, or teaching in the prior art that would have led a person of ordinary skill in the art to”:

1. “select the references”;
2. “select the teachings of [the] separate references”; or
3. “combine [those teachings] in the way that would produce the claimed” subject matter.

Moreover, the present Office Action presents **no proof, and** indeed **no evidence, of anything** “in the prior art as a whole to suggest the **desirability**, and thus the obviousness, of making the **combination**.” Instead, the present Office Action merely asserts, at Page 9, “it would have been obvious to an artisan to apply Hari’s teaching to Rogers’s system with the motivation being to provide a user the flexibility of selecting the content as well as scheduling the program that the user wants to watch without disturbed.” Applicant respectfully submits that this unfounded assertion fails to provide any evidence of any “suggestion, motivation, or teaching in the prior art that would have led a person of ordinary skill in the art to”:

1. “select the references”;
2. “select the teachings of [the] separate references”; or
3. “combine [those teachings] in the way that would produce the claimed” subject matter.

c. Conclusion

For at least these reasons, a reconsideration and withdrawal of the rejection of claim 63 is respectfully requested.

40. Claim 64

a. *Prima Facie* Criteria

None of the applied portions of the references relied upon in the Office Action, whether considered alone or in combination, establish a *prima facie* case of obviousness. Since claim

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64 depends from claim 63, Applicant incorporates by reference each traversal regarding claim 63, *supra*.

b. No Motivation or Suggestion to Combine the Applied References

The present Office Action presents **no proof, and** notably **no evidence** whatsoever, of any “suggestion, motivation, or teaching in the prior art that would have led a person of ordinary skill in the art to”:

1. “select the references”;
2. “select the teachings of [the] separate references”; or
3. “combine [those teachings] in the way that would produce the claimed” subject matter.

Moreover, the present Office Action presents **no proof, and** indeed **no evidence, of anything** “in the prior art as a whole to suggest the **desirability**, and thus the obviousness, of making the **combination**.” Instead, the present Office Action merely asserts, at Page 11, “it would have been obvious to an artisan to apply DeSimone’s teaching to Rogers’s system with the motivation being to provide real time interactive distribution of multimedia information using the multicast IP service.” Applicant respectfully submits that this unfounded assertion fails to provide any evidence of any “suggestion, motivation, or teaching in the prior art that would have led a person of ordinary skill in the art to”:

1. “select the references”;
2. “select the teachings of [the] separate references”; or
3. “combine [those teachings] in the way that would produce the claimed” subject matter.

c. Conclusion

For at least these reasons, a reconsideration and withdrawal of the rejection of claim 64 is respectfully requested.

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41. Claim 65

a. *Prima Facie* Criteria

None of the applied portions of the references relied upon in the Office Action, whether considered alone or in combination, establish a *prima facie* case of obviousness. Since claim 65 depends from claim 63, Applicant incorporates by reference each traversal regarding claim 63, *supra*.

b. No Motivation or Suggestion to Combine the Applied References

The present Office Action presents **no proof, and** notably **no evidence** whatsoever, of any “suggestion, motivation, or teaching in the prior art that would have led a person of ordinary skill in the art to”:

1. “select the references”;
2. “select the teachings of [the] separate references”; or
3. “combine [those teachings] in the way that would produce the claimed” subject matter.

Moreover, the present Office Action presents **no proof, and** indeed **no evidence, of anything** “in the prior art as a whole to suggest the **desirability**, and thus the obviousness, of making the **combination**.” Instead, the present Office Action merely asserts, at Page 6, “it would have been obvious to provide data over ATM network unicastly.” Applicant respectfully submits that this unfounded assertion fails to provide any evidence of any “suggestion, motivation, or teaching in the prior art that would have led a person of ordinary skill in the art to”:

1. “select the references”;
2. “select the teachings of [the] separate references”; or
3. “combine [those teachings] in the way that would produce the claimed” subject matter.

c. Conclusion

For at least these reasons, a reconsideration and withdrawal of the rejection of claim 65 is respectfully requested.

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42. Claim 66

a. *Prima Facie* Criteria

None of the applied portions of the references relied upon in the Office Action, whether considered alone or in combination, establish a *prima facie* case of obviousness. Since claim 66 depends from claim 63, Applicant incorporates by reference each traversal regarding claim 63, *supra*.

b. Missing Claim Limitations

The Office Action appears to improperly group claims together in a common rejection without any showing that the rejection is equally applicable to all claims in the group. That is never appropriate. See MPEP 707.07(d). For example, claim 66 states, *inter alia*, yet the present Office Action fails to even allege that any applied portion of any relied upon reference teaches, “wherein the channel source address is an ATM virtual path and transmission circuit”.

Thus, even if there were motivation or suggestion to modify or combine the applied portions of the references relied upon in the Office Action (an assumption that is respectfully traversed), and even if there were a reasonable expectation of success in combining or modifying the applied portions of the references relied upon in the Office Action (another assumption that is respectfully traversed), the applied portions of the references relied upon in the Office Action, **as attempted to be modified and/or combined**, still do not expressly or inherently teach **every** limitation of the independent claims, and consequently fail to establish a *prima facie* case of obviousness. Consequently, for at least the reasons mentioned above, reconsideration and withdrawal of these rejections is respectfully requested.

c. No Motivation or Suggestion to Combine the Applied References

The present Office Action presents **no proof, and notably no evidence** whatsoever, of any “suggestion, motivation, or teaching in the prior art that would have led a person of ordinary skill in the art to”:

1. “select the references”;

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2. "select the teachings of [the] separate references"; or
3. "combine [those teachings] in the way that would produce the claimed" subject matter.

Moreover, the present Office Action presents **no proof, and indeed no evidence, of anything** "in the prior art as a whole to suggest the **desirability**, and thus the obviousness, of making the **combination**." Instead, the present Office Action merely asserts, at Page 6, "it would have been obvious to provide data over ATM network unicastly." Applicant respectfully submits that this unfounded assertion fails to provide any evidence of any "suggestion, motivation, or teaching in the prior art that would have led a person of ordinary skill in the art to":

1. "select the references";
2. "select the teachings of [the] separate references"; or
3. "combine [those teachings] in the way that would produce the claimed" subject matter.

d. Conclusion

For at least these reasons, a reconsideration and withdrawal of the rejection of claim 66 is respectfully requested.

43. Claim 67

a. *Prima Facie* Criteria

None of the applied portions of the references relied upon in the Office Action, whether considered alone or in combination, establish a *prima facie* case of obviousness. Since claim 67 depends from claim 58, Applicant incorporates by reference each traversal regarding claim 58, *supra*.

b. No Motivation or Suggestion to Combine the Applied References

The present Office Action presents **no proof, and notably no evidence** whatsoever, of any "suggestion, motivation, or teaching in the prior art that would have led a person of ordinary skill in the art to":

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1. "select the references";
2. "select the teachings of [the] separate references"; or
3. "combine [those teachings] in the way that would produce the claimed" subject matter.

Moreover, the present Office Action presents **no proof, and indeed no evidence, of anything** "in the prior art as a whole to suggest the **desirability**, and thus the obviousness, of making the **combination**." Instead, the present Office Action merely asserts, at Page 12, "it would have been obvious to an artisan to apply DeSimone's teaching to Rogers's system with the motivation being to provide a conference to only the requested client." Applicant respectfully submits that this unfounded assertion fails to provide any evidence of any "suggestion, motivation, or teaching in the prior art that would have led a person of ordinary skill in the art to":

1. "select the references";
2. "select the teachings of [the] separate references"; or
3. "combine [those teachings] in the way that would produce the claimed" subject matter.

c. Conclusion

For at least these reasons, a reconsideration and withdrawal of the rejection of claim 67 is respectfully requested.

44. Claim 68

a. *Prima Facie* Criteria

None of the applied portions of the references relied upon in the Office Action, whether considered alone or in combination, establish a *prima facie* case of obviousness. Since claim 68 depends from claim 58, Applicant incorporates by reference each traversal regarding claim 58, *supra*.

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b. No Motivation or Suggestion to Combine the Applied References

The present Office Action presents **no proof, and notably no evidence** whatsoever, of any “suggestion, motivation, or teaching in the prior art that would have led a person of ordinary skill in the art to”:

1. “select the references”;
2. “select the teachings of [the] separate references”; or
3. “combine [those teachings] in the way that would produce the claimed” subject matter.

Moreover, the present Office Action presents **no proof, and indeed no evidence, of anything** “in the prior art as a whole to suggest the **desirability**, and thus the obviousness, of making the **combination**” regarding the additional subject matter of claim 68.

c. Conclusion

For at least these reasons, a reconsideration and withdrawal of the rejection of claim 68 is respectfully requested.

45. Claim 69

a. *Prima Facie* Criteria

None of the applied portions of the references relied upon in the Office Action, whether considered alone or in combination, establish a *prima facie* case of obviousness. Since claim 69 depends from claim 58, Applicant incorporates by reference each traversal regarding claim 58, *supra*.

b. No Motivation or Suggestion to Combine the Applied References

Claim 69 states, *inter alia*, “wherein the subscriber unit is connected to the computer system via a DSL connection.” The present Office Action presents **no proof, and notably no evidence** whatsoever, of any “suggestion, motivation, or teaching in the prior art that would have led a person of ordinary skill in the art to”:

1. “select the references”;

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2. "select the teachings of [the] separate references"; or
3. "combine [those teachings] in the way that would produce the claimed" subject matter.

Moreover, the present Office Action presents **no proof, and indeed no evidence, of anything** "in the prior art as a whole to suggest the **desirability**, and thus the obviousness, of making the **combination**." Instead, the present Office Action merely asserts, at Page 9, "it would have been obvious to an artisan to apply Hari's teaching to Rogers's system with the motivation being to provide a user the flexibility of selecting the content as well as scheduling the program that the user wants to watch without disturbed." As a substantive matter, Applicant respectfully submits that this unfounded assertion appears to have no relevance to the claimed subject matter. Moreover, Applicant respectfully submits that this unfounded assertion fails to provide any evidence of any "suggestion, motivation, or teaching in the prior art that would have led a person of ordinary skill in the art to":

1. "select the references";
2. "select the teachings of [the] separate references"; or
3. "combine [those teachings] in the way that would produce the claimed" subject matter.

c. Conclusion

For at least these reasons, a reconsideration and withdrawal of the rejection of claim 69 is respectfully requested.

46. Claim 70

a. *Prima Facie* Criteria

None of the applied portions of the references relied upon in the Office Action, whether considered alone or in combination, establish a *prima facie* case of obviousness. Since claim 70 depends from claim 58, Applicant incorporates by reference each traversal regarding claim 58, *supra*.

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b. Missing Claim Limitations

Claim 70 states, *inter alia*, yet the applied portions of Rogers do not teach, “wherein an available channel is a channel whose data is currently being multicasted”. The present Office Action attempts, at Page 5, to apply a nonexistent portion of Rogers in the rejection of claim 70 (“page 310, right column, second paragraph”). Applicant respectfully submits that the present Office Action fails to provide any evidence that any applied portion of any relied upon reference teaches “wherein an available channel is a channel whose data is currently being multicasted”.

Thus, even if there were motivation or suggestion to modify or combine the applied portions of the references relied upon in the Office Action (an assumption that is respectfully traversed), and even if there were a reasonable expectation of success in combining or modifying the applied portions of the references relied upon in the Office Action (another assumption that is respectfully traversed), the applied portions of the references relied upon in the Office Action, **as attempted to be modified and/or combined**, still do not expressly or inherently teach **every** limitation of the independent claims, and consequently fail to establish a *prima facie* case of obviousness. Consequently, for at least the reasons mentioned above, reconsideration and withdrawal of these rejections is respectfully requested.

c. No Motivation or Suggestion to Combine the Applied References

The present Office Action presents **no proof, and** notably **no evidence** whatsoever, of any “suggestion, motivation, or teaching in the prior art that would have led a person of ordinary skill in the art to”:

1. “select the references”;
2. “select the teachings of [the] separate references”; or
3. “combine [those teachings] in the way that would produce the claimed” subject matter.

Moreover, the present Office Action presents **no proof, and** indeed **no evidence, of anything** “in the prior art as a whole to suggest the **desirability**, and thus the obviousness, of making the **combination**” regarding the additional subject matter of claim 70.

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d. Conclusion

For at least these reasons, a reconsideration and withdrawal of the rejection of claim 70 is respectfully requested.

47. Claim 71

a. *Prima Facie* Criteria

None of the applied portions of the references relied upon in the Office Action, whether considered alone or in combination, establish a *prima facie* case of obviousness. Since claim 71 depends from claim 58, Applicant incorporates by reference each traversal regarding claim 58, *supra*.

b. Missing Claim Limitations

Claim 71 states, *inter alia*, yet the applied portions of Rogers fail to teach, “wherein data for a channel is received at the computer system and forwarded to the subscriber unit”. Instead, Rogers allegedly illustrates, at Fig. 7a, step 702, “SWITCH SENDS LIST OF AVAIL. **PROGRAMS**” (emphasis added). Applicant respectfully submits that a “list” of “programs” does not teach a “channel” according to how the word “channel” would be construed “in light of the specification” “by one of ordinary skill in the art”.

The applied portions of Day fail to cure at least these deficiencies of the applied portions of Rogers.

Thus, even if there were motivation or suggestion to modify or combine the applied portions of the references relied upon in the Office Action (an assumption that is respectfully traversed), and even if there were a reasonable expectation of success in combining or modifying the applied portions of the references relied upon in the Office Action (another assumption that is respectfully traversed), the applied portions of the references relied upon in the Office Action, **as attempted to be modified and/or combined**, still do not expressly or inherently teach **every** limitation of the independent claims, and consequently fail to establish a *prima facie* case of obviousness. Consequently, for at least the reasons mentioned above, reconsideration and withdrawal of these rejections is respectfully requested.

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c. No Motivation or Suggestion to Combine the Applied References

The present Office Action presents **no proof, and** notably **no evidence** whatsoever, of any “suggestion, motivation, or teaching in the prior art that would have led a person of ordinary skill in the art to”:

1. “select the references”;
2. “select the teachings of [the] separate references”; or
3. “combine [those teachings] in the way that would produce the claimed” subject matter.

Moreover, the present Office Action presents **no proof, and** indeed **no evidence, of anything** “in the prior art as a whole to suggest the **desirability**, and thus the obviousness, of making the **combination**” regarding the additional subject matter of claim 71.

d. Conclusion

For at least these reasons, a reconsideration and withdrawal of the rejection of claim 71 is respectfully requested.

48. Claim 72

a. *Prima Facie* Criteria

None of the applied portions of the references relied upon in the Office Action, whether considered alone or in combination, establish a *prima facie* case of obviousness. Since claim 72 depends from claim 71, Applicant incorporates by reference each traversal regarding claim 71, *supra*.

b. No Motivation or Suggestion to Combine the Applied References

The present Office Action presents **no proof, and** notably **no evidence** whatsoever, of any “suggestion, motivation, or teaching in the prior art that would have led a person of ordinary skill in the art to”:

1. “select the references”;

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2. "select the teachings of [the] separate references"; or
3. "combine [those teachings] in the way that would produce the claimed" subject matter.

Moreover, the present Office Action presents **no proof, and indeed no evidence, of anything** "in the prior art as a whole to suggest the **desirability**, and thus the obviousness, of making the **combination**." Instead, the present Office Action merely asserts, at Page 13, "it would have been obvious to an artisan to apply Acharya's teaching to Rogers's system with the motivation being to provide transmits data as a series of variable length packets, each having a circuit number that identifies its source and destination address." Applicant respectfully submits that this unfounded assertion fails to provide any evidence of any "suggestion, motivation, or teaching in the prior art that would have led a person of ordinary skill in the art to":

1. "select the references";
2. "select the teachings of [the] separate references"; or
3. "combine [those teachings] in the way that would produce the claimed" subject matter.

c. Conclusion

For at least these reasons, a reconsideration and withdrawal of the rejection of claim 72 is respectfully requested.

49. Claim 73

a. *Prima Facie* Criteria

None of the applied portions of the references relied upon in the Office Action, whether considered alone or in combination, establish a *prima facie* case of obviousness. Since claim 73 depends from claim 58, Applicant incorporates by reference each traversal regarding claim 58, *supra*.

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b. No Motivation or Suggestion to Combine the Applied References

The present Office Action presents **no proof, and** notably **no evidence** whatsoever, of any “suggestion, motivation, or teaching in the prior art that would have led a person of ordinary skill in the art to”:

1. “select the references”;
2. “select the teachings of [the] separate references”; or
3. “combine [those teachings] in the way that would produce the claimed” subject matter.

Moreover, the present Office Action presents **no proof, and** indeed **no evidence, of anything** “in the prior art as a whole to suggest the **desirability**, and thus the obviousness, of making the **combination**.” Instead, the present Office Action merely asserts, at Page 12, “it would have been obvious to an artisan to apply DeSimone’s teaching to Rogers’s system with the motivation being to provide a conference to only the requested client.” Applicant respectfully submits that this unfounded assertion fails to provide any evidence of any “suggestion, motivation, or teaching in the prior art that would have led a person of ordinary skill in the art to”:

1. “select the references”;
2. “select the teachings of [the] separate references”; or
3. “combine [those teachings] in the way that would produce the claimed” subject matter.

c. Conclusion

For at least these reasons, a reconsideration and withdrawal of the rejection of claim 73 is respectfully requested.

50. Claim 74

a. *Prima Facie* Criteria

None of the applied portions of the references relied upon in the Office Action, whether considered alone or in combination, establish a *prima facie* case of obviousness. Since claim

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74 depends from claim 58, Applicant incorporates by reference each traversal regarding claim 58, *supra*.

b. Missing Claim Limitations

Claim 74 states, *inter alia*, yet the applied portions of Rogers fail to teach, “wherein the request is sent in response to the subscriber requesting to view the **listing**”. Since claim 74 depends from claim 58, “the listing” is a “listing of available channels”. Instead of teaching this claimed subject matter, Rogers allegedly illustrates, at Fig. 7a, step 706, “**SELECTED PROGRAM DISPLAYED IN WINDOW**” (emphasis added). Applicant respectfully submits that a “program” as recited in step 706 does not teach a “listing of available channels”.

The applied portions of Day fail to cure at least these deficiencies of the applied portions of Rogers.

Thus, even if there were motivation or suggestion to modify or combine the applied portions of the references relied upon in the Office Action (an assumption that is respectfully traversed), and even if there were a reasonable expectation of success in combining or modifying the applied portions of the references relied upon in the Office Action (another assumption that is respectfully traversed), the applied portions of the references relied upon in the Office Action, **as attempted to be modified and/or combined**, still do not expressly or inherently teach **every** limitation of the independent claims, and consequently fail to establish a *prima facie* case of obviousness. Consequently, for at least the reasons mentioned above, reconsideration and withdrawal of these rejections is respectfully requested.

c. No Motivation or Suggestion to Combine the Applied References

The present Office Action presents **no proof, and** notably **no evidence** whatsoever, of any “suggestion, motivation, or teaching in the prior art that would have led a person of ordinary skill in the art to”:

1. “select the references”;
2. “select the teachings of [the] separate references”; or

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3. "combine [those teachings] in the way that would produce the claimed" subject matter.

Moreover, the present Office Action presents **no proof, and indeed no evidence, of anything** "in the prior art as a whole to suggest the **desirability**, and thus the obviousness, of making the **combination**" regarding the additional subject matter of claim 74.

d. Conclusion

For at least these reasons, a reconsideration and withdrawal of the rejection of claim 74 is respectfully requested.

51. Claim 75

a. Inherency

The present Office Action states, regarding Rogers, that "receiving from a subscriber unit a request for a list of available channels (programs), the request including information identifying a subscriber (fig.7a, step 701, the identity of the subscriber is inherent in the request so that the server could be able to send back a list of available program-emphasis added)." See, Page 3. No evidence has been presented that the admittedly "missing descriptive material is 'necessarily present'" in Rogers. Applicant respectfully requests provision of evidence supporting the assertion that "receiving from a subscriber unit a request for a list of available channels (programs), the request including information identifying a subscriber (fig.7a, step 701, the identity of the subscriber is inherent in the request so that the server could be able to send back a list of available program-emphasis added)."

To the extent that the present Office Action or any future Office Action intends to rely on inherency to support a claim rejection, Applicant respectfully traverses, respectfully requests provision of proper evidence supporting such rejection, and respectfully requests a detailed explanation of how the "missing descriptive material is necessarily present, not merely probably or possibly present", in any prior art reference cited to support such rejection.

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b. *Prima Facie* Criteria

None of the applied portions of the references relied upon in the Office Action, whether considered alone or in combination, establish a *prima facie* case of obviousness.

c. Missing Claim Limitations

The Office Action appears to improperly group claims together in a common rejection without any showing that the rejection is equally applicable to all claims in the group. That is never appropriate. See MPEP 707.07(d). For example, claim 75 states, *inter alia*, yet the present Office Action fails to even allege that any applied portion of any relied upon reference teaches, "receiving from a subscriber unit a request for a list of available channels, the request being sent using HTTP protocol and **in response to a subscriber requesting to view the list**".

Thus, even if there were motivation or suggestion to modify or combine the applied portions of the references relied upon in the Office Action (an assumption that is respectfully traversed), and even if there were a reasonable expectation of success in combining or modifying the applied portions of the references relied upon in the Office Action (another assumption that is respectfully traversed), the applied portions of the references relied upon in the Office Action, **as attempted to be modified and/or combined**, still do not expressly or inherently teach **every** limitation of the independent claims, and consequently fail to establish a *prima facie* case of obviousness. Consequently, for at least the reasons mentioned above, reconsideration and withdrawal of these rejections is respectfully requested.

d. No Motivation or Suggestion to Combine the Applied References

The present Office Action presents **no proof, and** notably **no evidence** whatsoever, of any "suggestion, motivation, or teaching in the prior art that would have led a person of ordinary skill in the art to":

1. "select the references";
2. "select the teachings of [the] separate references"; or
3. "combine [those teachings] in the way that would produce the claimed" subject matter.

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Moreover, the present Office Action presents **no proof, and indeed no evidence, of anything** “in the prior art as a whole to suggest the **desirability**, and thus the obviousness, of making the **combination**.” Instead, the present Office Action merely asserts, at Pages 3 and 4 “it would have been obvious to an artisan to apply Day’s teaching to Roger’s system with the motivation being to enable user to access or schedule a multimedia data presentation in a more efficient and reliable manner.” Applicant respectfully submits that this unfounded assertion fails to provide any evidence of any “suggestion, motivation, or teaching in the prior art that would have led a person of ordinary skill in the art to”:

1. “select the references”;
2. “select the teachings of [the] separate references”; or
3. “combine [those teachings] in the way that would produce the claimed” subject matter.

Thus, the Office Action fails to present the required **proof** of obviousness. Consequently, Applicant respectfully requests withdrawal of the obviousness rejections of claim 75.

e. Conclusion

For at least these reasons, a reconsideration and withdrawal of the rejection of claim 75 is respectfully requested.

52. Claim 76

a. *Prima Facie* Criteria

None of the applied portions of the references relied upon in the Office Action, whether considered alone or in combination, establish a *prima facie* case of obviousness. Since claim 76 depends from claim 75, Applicant incorporates by reference each traversal regarding claim 75, *supra*.

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b. No Motivation or Suggestion to Combine the Applied References

The present Office Action presents **no proof, and** notably **no evidence** whatsoever, of any “suggestion, motivation, or teaching in the prior art that would have led a person of ordinary skill in the art to”:

1. “select the references”;
2. “select the teachings of [the] separate references”; or
3. “combine [those teachings] in the way that would produce the claimed” subject matter.

Moreover, the present Office Action presents **no proof, and** indeed **no evidence, of anything** “in the prior art as a whole to suggest the **desirability**, and thus the obviousness, of making the **combination**.” Instead, the present Office Action merely asserts, at Pages 7-8, “it would have been obvious to an artisan to apply Hari’s teaching Rogers’s system with the motivation being to provide one user requesting a video.” Applicant respectfully submits that this unfounded assertion fails to provide any evidence of any “suggestion, motivation, or teaching in the prior art that would have led a person of ordinary skill in the art to”:

1. “select the references”;
2. “select the teachings of [the] separate references”; or
3. “combine [those teachings] in the way that would produce the claimed” subject matter.

c. Conclusion

For at least these reasons, a reconsideration and withdrawal of the rejection of claim 76 is respectfully requested.

53. Claim 77

a. *Prima Facie* Criteria

None of the applied portions of the references relied upon in the Office Action, whether considered alone or in combination, establish a *prima facie* case of obviousness. Since claim

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77 depends from claim 75, Applicant incorporates by reference each traversal regarding claim 75, *supra*.

b. Missing Claim Limitations

Claim 77 states, *inter alia*, yet the applied portions of Rogers fail to teach, “wherein available channels are provided to the computer system by receiving from a plurality of content providers **indications of channels that are made available by each content provider**”. Instead, Rogers allegedly illustrates, at Fig. 7a, step 702, “SWITCH SENDS LIST OF AVAIL. PROGRAMS”. Applicant respectfully submits that the applied portion of Rogers is silent regarding a “content provider”. Accordingly, Applicant submits that Rogers does not teach, “wherein available channels are provided to the computer system by receiving from a plurality of content providers **indications of channels that are made available by each content provider**”. The applied portions of Day fail to cure at least these deficiencies of the applied portions of Rogers.

Thus, even if there were motivation or suggestion to modify or combine the applied portions of the references relied upon in the Office Action (an assumption that is respectfully traversed), and even if there were a reasonable expectation of success in combining or modifying the applied portions of the references relied upon in the Office Action (another assumption that is respectfully traversed), the applied portions of the references relied upon in the Office Action, **as attempted to be modified and/or combined**, still do not expressly or inherently teach **every** limitation of the independent claims, and consequently fail to establish a *prima facie* case of obviousness. Consequently, for at least the reasons mentioned above, reconsideration and withdrawal of these rejections is respectfully requested.

c. No Motivation or Suggestion to Combine the Applied References

The present Office Action presents **no proof, and notably no evidence** whatsoever, of any “suggestion, motivation, or teaching in the prior art that would have led a person of ordinary skill in the art to”:

1. “select the references”;

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2. "select the teachings of [the] separate references"; or
3. "combine [those teachings] in the way that would produce the claimed" subject matter.

Moreover, the present Office Action presents **no proof, and indeed no evidence, of anything** "in the prior art as a whole to suggest the **desirability**, and thus the obviousness, of making the **combination**" regarding the additional subject matter of claim 77.

d. Conclusion

For at least these reasons, a reconsideration and withdrawal of the rejection of claim 77 is respectfully requested.

54. Claim 78

a. *Prima Facie* Criteria

None of the applied portions of the references relied upon in the Office Action, whether considered alone or in combination, establish a *prima facie* case of obviousness. Since claim 78 depends from claim 75, Applicant incorporates by reference each traversal regarding claim 75, *supra*.

b. No Motivation or Suggestion to Combine the Applied References

The present Office Action presents **no proof, and notably no evidence** whatsoever, of any "suggestion, motivation, or teaching in the prior art that would have led a person of ordinary skill in the art to":

1. "select the references";
2. "select the teachings of [the] separate references"; or
3. "combine [those teachings] in the way that would produce the claimed" subject matter.

Moreover, the present Office Action presents **no proof, and indeed no evidence, of anything** "in the prior art as a whole to suggest the **desirability**, and thus the obviousness, of making the **combination**" regarding the additional subject matter of claim 78.

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c. Conclusion

For at least these reasons, a reconsideration and withdrawal of the rejection of claim 78 is respectfully requested.

55. Claim 79

a. *Prima Facie* Criteria

None of the applied portions of the references relied upon in the Office Action, whether considered alone or in combination, establish a *prima facie* case of obviousness. Since claim 79 depends from claim 78, Applicant incorporates by reference each traversal regarding claim 78, *supra*.

b. No Motivation or Suggestion to Combine the Applied References

Claim 79 states, *inter alia*, "wherein the subscriber unit is connected to the computer system via a DSL connection." The present Office Action presents **no proof, and** notably **no evidence** whatsoever, of any "suggestion, motivation, or teaching in the prior art that would have led a person of ordinary skill in the art to":

1. "select the references";
2. "select the teachings of [the] separate references"; or
3. "combine [those teachings] in the way that would produce the claimed" subject matter.

Moreover, the present Office Action presents **no proof, and** indeed **no evidence, of anything** "in the prior art as a whole to suggest the **desirability**, and thus the obviousness, of making the **combination**." Instead, the present Office Action merely asserts, at Page 9, "it would have been obvious to an artisan to apply Hari's teaching to Rogers's system with the motivation being to provide a user the flexibility of selecting the content as well as scheduling the program that the user wants to watch without disturbed." As a substantive matter, Applicant respectfully submits that this unfounded assertion appears to have no relevance to the claimed subject matter. Moreover, Applicant respectfully submits that this unfounded assertion fails to provide

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any evidence of any “suggestion, motivation, or teaching in the prior art that would have led a person of ordinary skill in the art to”:

1. “select the references”;
2. “select the teachings of [the] separate references”; or
3. “combine [those teachings] in the way that would produce the claimed” subject matter.

c. Conclusion

For at least these reasons, a reconsideration and withdrawal of the rejection of claim 79 is respectfully requested.

56. Claim 80

a. *Prima Facie* Criteria

None of the applied portions of the references relied upon in the Office Action, whether considered alone or in combination, establish a *prima facie* case of obviousness. Since claim 80 depends from claim 75, Applicant incorporates by reference each traversal regarding claim 75, *supra*.

b. Missing Claim Limitations

Claim 80 states, *inter alia*, yet the applied portions of Rogers fail to teach, “wherein data for a channel is received at the computer system and forwarded to the subscriber unit”. Instead, Rogers allegedly illustrates, at Fig. 7a, step 702, “SWITCH SENDS LIST OF AVAIL.

PROGRAMS” (emphasis added). Applicant respectfully submits that a “list” of “programs” does not teach a “channel” according to how the word “channel” would be construed “in light of the specification” “by one of ordinary skill in the art”.

The applied portions of Day fail to cure at least these deficiencies of the applied portions of Rogers.

Thus, even if there were motivation or suggestion to modify or combine the applied portions of the references relied upon in the Office Action (an assumption that is respectfully

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traversed), and even if there were a reasonable expectation of success in combining or modifying the applied portions of the references relied upon in the Office Action (another assumption that is respectfully traversed), the applied portions of the references relied upon in the Office Action, **as attempted to be modified and/or combined**, still do not expressly or inherently teach **every** limitation of the independent claims, and consequently fail to establish a *prima facie* case of obviousness. Consequently, for at least the reasons mentioned above, reconsideration and withdrawal of these rejections is respectfully requested.

c. No Motivation or Suggestion to Combine the Applied References

The present Office Action presents **no proof, and** notably **no evidence** whatsoever, of any “suggestion, motivation, or teaching in the prior art that would have led a person of ordinary skill in the art to”:

1. “select the references”;
2. “select the teachings of [the] separate references”; or
3. “combine [those teachings] in the way that would produce the claimed” subject matter.

Moreover, the present Office Action presents **no proof, and** indeed **no evidence, of anything** “in the prior art as a whole to suggest the **desirability**, and thus the obviousness, of making the **combination**” regarding the additional subject matter of claim 80.

d. Conclusion

For at least these reasons, a reconsideration and withdrawal of the rejection of claim 80 is respectfully requested.

57. Claim 81

a. Inherency

The present Office Action states, regarding Rogers, that “receiving from a subscriber unit a request for a list of available channels (programs), the request including information identifying a subscriber (fig.7a, step 701, the identity of the subscriber is inherent in the request so that the

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server could be able to send back a list of available program-emphasis added).” See, Page 3. No evidence has been presented that the admittedly “missing descriptive material is ‘necessarily present’” in Rogers. Applicant respectfully requests provision of evidence supporting the assertion that “receiving from a subscriber unit a request for a list of available channels (programs), the request including information identifying a subscriber (fig.7a, step 701, the identity of the subscriber is inherent in the request so that the server could be able to send back a list of available program-emphasis added).”

To the extent that the present Office Action or any future Office Action intends to rely on inherency to support a claim rejection, Applicant respectfully traverses, respectfully requests provision of proper evidence supporting such rejection, and respectfully requests a detailed explanation of how the “missing descriptive material is necessarily present, not merely probably or possibly present”, in any prior art reference cited to support such rejection.

b. *Prima Facie* Criteria

None of the applied portions of the references relied upon in the Office Action, whether considered alone or in combination, establish a *prima facie* case of obviousness.

c. Missing Claim Limitations

Claim 81 states, *inter alia*, yet the applied portions of Rogers fail to teach, “receiving from a subscriber unit a request for a listing of available channels, the request including information identifying a subscriber”. Instead, Rogers allegedly illustrates, at Fig. 7a, step 702, “SWITCH SENDS LIST OF AVAIL. **PROGRAMS**” (emphasis added). Applicant respectfully submits that a “list” of “programs” does not teach “a listing of available channels” according to how the word “channel” would be construed “in light of the specification” “by one of ordinary skill in the art”.

The applied portions of Day fail to cure at least these deficiencies of the applied portions of Rogers.

The Office Action appears to improperly group claims together in a common rejection without any showing that the rejection is equally applicable to all claims in the group. That is

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never appropriate. See MPEP 707.07(d). For example, claim 81 states, *inter alia*, yet the present Office Action fails to even allege that any applied portion of any relied upon reference teaches, “sending to the subscriber unit a response with an indication of the identified channels, **the response identifying a multicast group assigned to each identified channel**”.

Thus, even if there were motivation or suggestion to modify or combine the applied portions of the references relied upon in the Office Action (an assumption that is respectfully traversed), and even if there were a reasonable expectation of success in combining or modifying the applied portions of the references relied upon in the Office Action (another assumption that is respectfully traversed), the applied portions of the references relied upon in the Office Action, **as attempted to be modified and/or combined**, still do not expressly or inherently teach **every** limitation of the independent claims, and consequently fail to establish a *prima facie* case of obviousness. Consequently, for at least the reasons mentioned above, reconsideration and withdrawal of these rejections is respectfully requested.

d. No Motivation or Suggestion to Combine the Applied References

The present Office Action presents **no proof, and notably no evidence** whatsoever, of any “suggestion, motivation, or teaching in the prior art that would have led a person of ordinary skill in the art to”:

1. “select the references”;
2. “select the teachings of [the] separate references”; or
3. “combine [those teachings] in the way that would produce the claimed” subject matter.

Moreover, the present Office Action presents **no proof, and indeed no evidence, of anything** “in the prior art as a whole to suggest the **desirability**, and thus the obviousness, of making the **combination**.” Instead, the present Office Action merely asserts, at Pages 3 and 4 “it would have been obvious to an artisan to apply Day’s teaching to Roger’s system with the motivation being to enable user to access or schedule a multimedia data presentation in a more efficient and reliable manner.” Applicant respectfully submits that this unfounded assertion fails to

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provide any evidence of any "suggestion, motivation, or teaching in the prior art that would have led a person of ordinary skill in the art to":

1. "select the references";
2. "select the teachings of [the] separate references"; or
3. "combine [those teachings] in the way that would produce the claimed" subject matter.

Thus, the Office Action fails to present the required **proof** of obviousness.

Consequently, Applicant respectfully requests withdrawal of the obviousness rejections of claim 81.

e. Conclusion

For at least these reasons, a reconsideration and withdrawal of the rejection of claim 81 is respectfully requested.

58. Claim 82

a. *Prima Facie* Criteria

None of the applied portions of the references relied upon in the Office Action, whether considered alone or in combination, establish a *prima facie* case of obviousness. Since claim 82 depends from claim 81, Applicant incorporates by reference each traversal regarding claim 81, *supra*.

b. No Motivation or Suggestion to Combine the Applied References

The present Office Action presents **no proof, and** notably **no evidence** whatsoever, of any "suggestion, motivation, or teaching in the prior art that would have led a person of ordinary skill in the art to":

1. "select the references";
2. "select the teachings of [the] separate references"; or
3. "combine [those teachings] in the way that would produce the claimed" subject matter.

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Moreover, the present Office Action presents **no proof, and indeed no evidence, of anything** “in the prior art as a whole to suggest the **desirability**, and thus the obviousness, of making the **combination**.” Instead, the present Office Action merely asserts, at Page 11 “it would have been obvious to an artisan to apply DeSimone’s teaching to Rogers’s system to provide conference over IP.” Applicant respectfully submits that this unfounded assertion fails to provide any evidence of any “suggestion, motivation, or teaching in the prior art that would have led a person of ordinary skill in the art to”:

1. “select the references”;
2. “select the teachings of [the] separate references”; or
3. “combine [those teachings] in the way that would produce the claimed” subject matter.

c. Conclusion

For at least these reasons, a reconsideration and withdrawal of the rejection of claim 82 is respectfully requested.

59. Claim 83

a. *Prima Facie* Criteria

None of the applied portions of the references relied upon in the Office Action, whether considered alone or in combination, establish a *prima facie* case of obviousness. Since claim 83 depends from claim 81, Applicant incorporates by reference each traversal regarding claim 81, *supra*.

b. No Motivation or Suggestion to Combine the Applied References

The present Office Action presents **no proof, and notably no evidence** whatsoever, of any “suggestion, motivation, or teaching in the prior art that would have led a person of ordinary skill in the art to”:

1. “select the references”;
2. “select the teachings of [the] separate references”; or

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3. "combine [those teachings] in the way that would produce the claimed" subject matter.

Moreover, the present Office Action presents **no proof, and indeed no evidence, of anything** "in the prior art as a whole to suggest the **desirability**, and thus the obviousness, of making the **combination**." Instead, the present Office Action merely asserts, at Pages 7-8, "it would have been obvious to an artisan to apply Hari's teaching Rogers's system with the motivation being to provide one user requesting a video." Applicant respectfully submits that this unfounded assertion fails to provide any evidence of any "suggestion, motivation, or teaching in the prior art that would have led a person of ordinary skill in the art to":

1. "select the references";
2. "select the teachings of [the] separate references"; or
3. "combine [those teachings] in the way that would produce the claimed" subject matter.

c. Conclusion

For at least these reasons, a reconsideration and withdrawal of the rejection of claim 83 is respectfully requested.

60. Claim 84

a. *Prima Facie* Criteria

None of the applied portions of the references relied upon in the Office Action, whether considered alone or in combination, establish a *prima facie* case of obviousness. Since claim 84 depends from claim 81, Applicant incorporates by reference each traversal regarding claim 81, *supra*.

b. Missing Claim Limitations

Claim 84 states, *inter alia*, yet the applied portions of Rogers fail to teach, "wherein available channels are provided to the computer system by receiving from a plurality of content providers **indications of channels that are made available by each content provider**".

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Instead, Rogers allegedly illustrates, at Fig. 7a, step 702, "SWITCH SENDS LIST OF AVAIL. PROGRAMS". Applicant respectfully submits that the applied portion of Rogers is silent regarding a "content provider". Accordingly, Applicant submits that Rogers does not teach, "wherein available channels are provided to the computer system by receiving from a plurality of content providers **indications of channels that are made available by each content provider**". The applied portions of Day fail to cure at least these deficiencies of the applied portions of Rogers.

Thus, even if there were motivation or suggestion to modify or combine the applied portions of the references relied upon in the Office Action (an assumption that is respectfully traversed), and even if there were a reasonable expectation of success in combining or modifying the applied portions of the references relied upon in the Office Action (another assumption that is respectfully traversed), the applied portions of the references relied upon in the Office Action, **as attempted to be modified and/or combined**, still do not expressly or inherently teach **every** limitation of the independent claims, and consequently fail to establish a *prima facie* case of obviousness. Consequently, for at least the reasons mentioned above, reconsideration and withdrawal of these rejections is respectfully requested.

c. No Motivation or Suggestion to Combine the Applied References

The present Office Action presents **no proof, and** notably **no evidence** whatsoever, of any "suggestion, motivation, or teaching in the prior art that would have led a person of ordinary skill in the art to":

1. "select the references";
2. "select the teachings of [the] separate references"; or
3. "combine [those teachings] in the way that would produce the claimed" subject matter.

Moreover, the present Office Action presents **no proof, and** indeed **no evidence, of anything** "in the prior art as a whole to suggest the **desirability**, and thus the obviousness, of making the **combination**" regarding the additional subject matter of claim 84.

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d. Conclusion

For at least these reasons, a reconsideration and withdrawal of the rejection of claim 84 is respectfully requested.

61. Claim 85

a. *Prima Facie* Criteria

None of the applied portions of the references relied upon in the Office Action, whether considered alone or in combination, establish a *prima facie* case of obviousness. Since claim 85 depends from claim 84, Applicant incorporates by reference each traversal regarding claim 84, *supra*.

b. Missing Claim Limitations

Claim 85 states, *inter alia*, yet the applied portions of Kalva fail to teach, “wherein an indication that a channel is made available by a content provider is sent using a session announcement protocol”. Applicant respectfully submits that the applied portion of Kalva does not even mention a “session announcement protocol”.

The applied portions of the remaining relied upon references fail to cure at least these deficiencies of the applied portions of Kalva.

Thus, even if there were motivation or suggestion to modify or combine the applied portions of the references relied upon in the Office Action (an assumption that is respectfully traversed), and even if there were a reasonable expectation of success in combining or modifying the applied portions of the references relied upon in the Office Action (another assumption that is respectfully traversed), the applied portions of the references relied upon in the Office Action, **as attempted to be modified and/or combined**, still do not expressly or inherently teach **every** limitation of the independent claims, and consequently fail to establish a *prima facie* case of obviousness. Consequently, for at least the reasons mentioned above, reconsideration and withdrawal of these rejections is respectfully requested.

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c. No Motivation or Suggestion to Combine the Applied References

The present Office Action presents **no proof, and** notably **no evidence** whatsoever, of any “suggestion, motivation, or teaching in the prior art that would have led a person of ordinary skill in the art to”:

1. “select the references”;
2. “select the teachings of [the] separate references”; or
3. “combine [those teachings] in the way that would produce the claimed” subject matter.

Moreover, the present Office Action presents **no proof, and** indeed **no evidence, of anything** “in the prior art as a whole to suggest the **desirability**, and thus the obviousness, of making the **combination**.” Instead, the present Office Action merely asserts, at Page 8, “it would have been obvious to an artisan to apply Hari’s teaching to Rogers’s system with the motivation being to provide a user the flexibility of selecting the content as well as scheduling the program that the user wants to watch without disturbed.” Applicant respectfully submits that this unfounded assertion fails to provide any evidence of any “suggestion, motivation, or teaching in the prior art that would have led a person of ordinary skill in the art to”:

1. “select the references”;
2. “select the teachings of [the] separate references”; or
3. “combine [those teachings] in the way that would produce the claimed” subject matter.

d. Conclusion

For at least these reasons, a reconsideration and withdrawal of the rejection of claim 85 is respectfully requested.

62. Claim 86

a. *Prima Facie* Criteria

None of the applied portions of the references relied upon in the Office Action, whether considered alone or in combination, establish a *prima facie* case of obviousness. Since claim

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86 depends from claim 84, Applicant incorporates by reference each traversal regarding claim 84, *supra*.

b. No Motivation or Suggestion to Combine the Applied References

The present Office Action presents **no proof, and** notably **no evidence** whatsoever, of any “suggestion, motivation, or teaching in the prior art that would have led a person of ordinary skill in the art to”:

1. “select the references”;
2. “select the teachings of [the] separate references”; or
3. “combine [those teachings] in the way that would produce the claimed” subject matter.

Moreover, the present Office Action presents **no proof, and** indeed **no evidence, of anything** “in the prior art as a whole to suggest the **desirability**, and thus the obviousness, of making the **combination**.” Instead, the present Office Action merely asserts, at Page 9, “it would have been obvious to an artisan to apply Hari’s teaching to Rogers’s system with the motivation being to provide a user the flexibility of selecting the content as well as scheduling the program that the user wants to watch without disturbed.” Applicant respectfully submits that this unfounded assertion fails to provide any evidence of any “suggestion, motivation, or teaching in the prior art that would have led a person of ordinary skill in the art to”:

1. “select the references”;
2. “select the teachings of [the] separate references”; or
3. “combine [those teachings] in the way that would produce the claimed” subject matter.

c. Conclusion

For at least these reasons, a reconsideration and withdrawal of the rejection of claim 86 is respectfully requested.

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63. Claim 87

a. *Prima Facie* Criteria

None of the applied portions of the references relied upon in the Office Action, whether considered alone or in combination, establish a *prima facie* case of obviousness. Since claim 87 depends from claim 86, Applicant incorporates by reference each traversal regarding claim 86, *supra*.

b. No Motivation or Suggestion to Combine the Applied References

The present Office Action presents **no proof, and** notably **no evidence** whatsoever, of any “suggestion, motivation, or teaching in the prior art that would have led a person of ordinary skill in the art to”:

1. “select the references”;
2. “select the teachings of [the] separate references”; or
3. “combine [those teachings] in the way that would produce the claimed” subject matter.

Moreover, the present Office Action presents **no proof, and** indeed **no evidence, of anything** “in the prior art as a whole to suggest the **desirability**, and thus the obviousness, of making the **combination**.” Instead, the present Office Action merely asserts, at Page 11, “it would have been obvious to an artisan to apply DeSimone’s teaching to Rogers’s system with the motivation being to provide real time interactive distribution of multimedia information using the multicast IP service.” Applicant respectfully submits that this unfounded assertion fails to provide any evidence of any “suggestion, motivation, or teaching in the prior art that would have led a person of ordinary skill in the art to”:

1. “select the references”;
2. “select the teachings of [the] separate references”; or
3. “combine [those teachings] in the way that would produce the claimed” subject matter.

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c. Conclusion

For at least these reasons, a reconsideration and withdrawal of the rejection of claim 87 is respectfully requested.

64. Claim 88

a. *Prima Facie* Criteria

None of the applied portions of the references relied upon in the Office Action, whether considered alone or in combination, establish a *prima facie* case of obviousness. Since claim 88 depends from claim 86, Applicant incorporates by reference each traversal regarding claim 86, *supra*.

b. No Motivation or Suggestion to Combine the Applied References

The present Office Action presents **no proof, and** notably **no evidence** whatsoever, of any "suggestion, motivation, or teaching in the prior art that would have led a person of ordinary skill in the art to":

1. "select the references";
2. "select the teachings of [the] separate references"; or
3. "combine [those teachings] in the way that would produce the claimed" subject matter.

Moreover, the present Office Action presents **no proof, and** indeed **no evidence, of anything** "in the prior art as a whole to suggest the **desirability**, and thus the obviousness, of making the **combination**." Instead, the present Office Action merely asserts, at Page 6, "it would have been obvious to provide data over ATM network unicastly." Applicant respectfully submits that this unfounded assertion fails to provide any evidence of any "suggestion, motivation, or teaching in the prior art that would have led a person of ordinary skill in the art to":

1. "select the references";
2. "select the teachings of [the] separate references"; or
3. "combine [those teachings] in the way that would produce the claimed" subject matter.

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c. Conclusion

For at least these reasons, a reconsideration and withdrawal of the rejection of claim 88 is respectfully requested.

65. Claim 89

a. *Prima Facie* Criteria

None of the applied portions of the references relied upon in the Office Action, whether considered alone or in combination, establish a *prima facie* case of obviousness. Since claim 89 depends from claim 86, Applicant incorporates by reference each traversal regarding claim 86, *supra*.

b. Missing Claim Limitations

The Office Action appears to improperly group claims together in a common rejection without any showing that the rejection is equally applicable to all claims in the group. That is never appropriate. See MPEP 707.07(d). For example, claim 89 states, *inter alia*, yet the present Office Action fails to even allege that any applied portion of any relied upon reference teaches, "wherein the channel source address is an ATM virtual path and transmission circuit".

Thus, even if there were motivation or suggestion to modify or combine the applied portions of the references relied upon in the Office Action (an assumption that is respectfully traversed), and even if there were a reasonable expectation of success in combining or modifying the applied portions of the references relied upon in the Office Action (another assumption that is respectfully traversed), the applied portions of the references relied upon in the Office Action, **as attempted to be modified and/or combined**, still do not expressly or inherently teach **every** limitation of the independent claims, and consequently fail to establish a *prima facie* case of obviousness. Consequently, for at least the reasons mentioned above, reconsideration and withdrawal of these rejections is respectfully requested.

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c. No Motivation or Suggestion to Combine the Applied References

The present Office Action presents **no proof, and notably no evidence** whatsoever, of any “suggestion, motivation, or teaching in the prior art that would have led a person of ordinary skill in the art to”:

1. “select the references”;
2. “select the teachings of [the] separate references”; or
3. “combine [those teachings] in the way that would produce the claimed” subject matter.

Moreover, the present Office Action presents **no proof, and indeed no evidence, of anything** “in the prior art as a whole to suggest the **desirability**, and thus the obviousness, of making the **combination**.” Instead, the present Office Action merely asserts, at Page 6, “it would have been obvious to provide data over ATM network unicastly.” Applicant respectfully submits that this unfounded assertion fails to provide any evidence of any “suggestion, motivation, or teaching in the prior art that would have led a person of ordinary skill in the art to”:

1. “select the references”;
2. “select the teachings of [the] separate references”; or
3. “combine [those teachings] in the way that would produce the claimed” subject matter.

d. Conclusion

For at least these reasons, a reconsideration and withdrawal of the rejection of claim 89 is respectfully requested.

66. Claim 90

a. *Prima Facie* Criteria

None of the applied portions of the references relied upon in the Office Action, whether considered alone or in combination, establish a *prima facie* case of obviousness. Since claim 90 depends from claim 81, Applicant incorporates by reference each traversal regarding claim 81, *supra*.

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b. No Motivation or Suggestion to Combine the Applied References

The present Office Action presents **no proof, and** notably **no evidence** whatsoever, of any “suggestion, motivation, or teaching in the prior art that would have led a person of ordinary skill in the art to”:

1. “select the references”;
2. “select the teachings of [the] separate references”; or
3. “combine [those teachings] in the way that would produce the claimed” subject matter.

Moreover, the present Office Action presents **no proof, and** indeed **no evidence, of anything** “in the prior art as a whole to suggest the **desirability**, and thus the obviousness, of making the **combination.**” Instead, the present Office Action merely asserts, at Page 12, “it would have been obvious to an artisan to apply DeSimone’s teaching to Rogers’s system with the motivation being to provide a conference to only the requested client.” Applicant respectfully submits that this unfounded assertion fails to provide any evidence of any “suggestion, motivation, or teaching in the prior art that would have led a person of ordinary skill in the art to”:

1. “select the references”;
2. “select the teachings of [the] separate references”; or
3. “combine [those teachings] in the way that would produce the claimed” subject matter.

c. Conclusion

For at least these reasons, a reconsideration and withdrawal of the rejection of claim 90 is respectfully requested.

67. Claim 91

a. *Prima Facie* Criteria

None of the applied portions of the references relied upon in the Office Action, whether considered alone or in combination, establish a *prima facie* case of obviousness. Since claim

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91 depends from claim 81, Applicant incorporates by reference each traversal regarding claim 81, *supra*.

b. No Motivation or Suggestion to Combine the Applied References

The present Office Action presents **no proof, and** notably **no evidence** whatsoever, of any “suggestion, motivation, or teaching in the prior art that would have led a person of ordinary skill in the art to”:

1. “select the references”;
2. “select the teachings of [the] separate references”; or
3. “combine [those teachings] in the way that would produce the claimed” subject matter.

Moreover, the present Office Action presents **no proof, and** indeed **no evidence, of anything** “in the prior art as a whole to suggest the **desirability**, and thus the obviousness, of making the **combination**” regarding the additional subject matter of claim 91.

c. Conclusion

For at least these reasons, a reconsideration and withdrawal of the rejection of claim 91 is respectfully requested.

68. Claim 92

a. *Prima Facie* Criteria

None of the applied portions of the references relied upon in the Office Action, whether considered alone or in combination, establish a *prima facie* case of obviousness. Since claim 92 depends from claim 91, Applicant incorporates by reference each traversal regarding claim 91, *supra*.

b. No Motivation or Suggestion to Combine the Applied References

Claim 92 states, *inter alia*, “wherein the subscriber unit is connected to the computer system via a DSL connection.” The present Office Action presents **no proof, and** notably **no**

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evidence whatsoever, of any “suggestion, motivation, or teaching in the prior art that would have led a person of ordinary skill in the art to”:

1. “select the references”;
2. “select the teachings of [the] separate references”; or
3. “combine [those teachings] in the way that would produce the claimed” subject matter.

Moreover, the present Office Action presents **no proof, and indeed no evidence, of anything** “in the prior art as a whole to suggest the **desirability**, and thus the obviousness, of making the **combination**.” Instead, the present Office Action merely asserts, at Page 9, “, it would have been obvious to an artisan to apply Hari’s teaching to Rogers’s system with the motivation being to provide a user the flexibility of selecting the content as well as scheduling the program that the user wants to watch without disturbed.” As a substantive matter, Applicant respectfully submits that this unfounded assertion appears to have no relevance to the claimed subject matter. Moreover, Applicant respectfully submits that this unfounded assertion fails to provide any evidence of any “suggestion, motivation, or teaching in the prior art that would have led a person of ordinary skill in the art to”:

1. “select the references”;
2. “select the teachings of [the] separate references”; or
3. “combine [those teachings] in the way that would produce the claimed” subject matter.

c. Conclusion

For at least these reasons, a reconsideration and withdrawal of the rejection of claim 92 is respectfully requested.

69. Claim 93

a. *Prima Facie* Criteria

None of the applied portions of the references relied upon in the Office Action, whether considered alone or in combination, establish a *prima facie* case of obviousness. Since claim

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93 depends from claim 81, Applicant incorporates by reference each traversal regarding claim 81, *supra*.

b. Missing Claim Limitations

Claim 93 states, *inter alia*, yet the applied portions of Rogers do not teach, “wherein an available channel is a channel whose data is currently being multicasted”. The present Office Action attempts, at Page 5, to apply a nonexistent portion of Rogers in the rejection of claim 93 (“page 310, right column, second paragraph”). Applicant respectfully submits that the present Office Action fails to provide any evidence that any applied portion of any relied upon reference teaches “wherein an available channel is a channel whose data is currently being multicasted”.

Thus, even if there were motivation or suggestion to modify or combine the applied portions of the references relied upon in the Office Action (an assumption that is respectfully traversed), and even if there were a reasonable expectation of success in combining or modifying the applied portions of the references relied upon in the Office Action (another assumption that is respectfully traversed), the applied portions of the references relied upon in the Office Action, **as attempted to be modified and/or combined**, still do not expressly or inherently teach **every** limitation of the independent claims, and consequently fail to establish a *prima facie* case of obviousness. Consequently, for at least the reasons mentioned above, reconsideration and withdrawal of these rejections is respectfully requested.

c. No Motivation or Suggestion to Combine the Applied References

The present Office Action presents **no proof, and** notably **no evidence** whatsoever, of any “suggestion, motivation, or teaching in the prior art that would have led a person of ordinary skill in the art to”:

1. “select the references”;
2. “select the teachings of [the] separate references”; or
3. “combine [those teachings] in the way that would produce the claimed” subject matter.

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Moreover, the present Office Action presents **no proof, and indeed no evidence, of anything** “in the prior art as a whole to suggest the **desirability**, and thus the obviousness, of making the **combination**” regarding the additional subject matter of claim 93.

d. Conclusion

For at least these reasons, a reconsideration and withdrawal of the rejection of claim 93 is respectfully requested.

70. Claim 94

a. *Prima Facie* Criteria

None of the applied portions of the references relied upon in the Office Action, whether considered alone or in combination, establish a *prima facie* case of obviousness. Since claim 94 depends from claim 81, Applicant incorporates by reference each traversal regarding claim 81, *supra*.

b. Missing Claim Limitations

The Office Action appears to improperly group claims together in a common rejection without any showing that the rejection is equally applicable to all claims in the group. That is never appropriate. See MPEP 707.07(d). For example, claim 94 states, *inter alia*, yet the present Office Action fails to even allege that any applied portion of any relied upon reference teaches, “wherein the subscriber is identified using a media access control address”.

Thus, even if there were motivation or suggestion to modify or combine the applied portions of the references relied upon in the Office Action (an assumption that is respectfully traversed), and even if there were a reasonable expectation of success in combining or modifying the applied portions of the references relied upon in the Office Action (another assumption that is respectfully traversed), the applied portions of the references relied upon in the Office Action, **as attempted to be modified and/or combined**, still do not expressly or inherently teach **every** limitation of the independent claims, and consequently fail to establish a

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prima facie case of obviousness. Consequently, for at least the reasons mentioned above, reconsideration and withdrawal of these rejections is respectfully requested.

c. No Motivation or Suggestion to Combine the Applied References

The present Office Action presents **no proof, and** notably **no evidence** whatsoever, of any “suggestion, motivation, or teaching in the prior art that would have led a person of ordinary skill in the art to”:

1. “select the references”;
2. “select the teachings of [the] separate references”; or
3. “combine [those teachings] in the way that would produce the claimed” subject matter.

Moreover, the present Office Action presents **no proof, and** indeed **no evidence, of anything** “in the prior art as a whole to suggest the **desirability**, and thus the obviousness, of making the **combination**.” Instead, the present Office Action merely asserts, at Page 11, “it would have been obvious to an artisan to apply DeSimone’s teaching to Rogers’s system with the motivation being to provide real time interactive distribution of multimedia information using the multicast IP service.” Applicant respectfully submits that this unfounded assertion fails to provide any evidence of any “suggestion, motivation, or teaching in the prior art that would have led a person of ordinary skill in the art to”:

1. “select the references”;
2. “select the teachings of [the] separate references”; or
3. “combine [those teachings] in the way that would produce the claimed” subject matter.

d. Conclusion

For at least these reasons, a reconsideration and withdrawal of the rejection of claim 94 is respectfully requested.

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71. Claim 95

a. *Prima Facie* Criteria

None of the applied portions of the references relied upon in the Office Action, whether considered alone or in combination, establish a *prima facie* case of obviousness. Since claim 95 depends from claim 81, Applicant incorporates by reference each traversal regarding claim 81, *supra*.

b. Missing Claim Limitations

The Office Action appears to improperly group claims together in a common rejection without any showing that the rejection is equally applicable to all claims in the group. That is never appropriate. See MPEP 707.07(d). For example, claim 95 states, *inter alia*, yet the present Office Action fails to even allege that any applied portion of any relied upon reference teaches, "wherein the subscriber is identified using an IP address".

Thus, even if there were motivation or suggestion to modify or combine the applied portions of the references relied upon in the Office Action (an assumption that is respectfully traversed), and even if there were a reasonable expectation of success in combining or modifying the applied portions of the references relied upon in the Office Action (another assumption that is respectfully traversed), the applied portions of the references relied upon in the Office Action, **as attempted to be modified and/or combined**, still do not expressly or inherently teach **every** limitation of the independent claims, and consequently fail to establish a *prima facie* case of obviousness. Consequently, for at least the reasons mentioned above, reconsideration and withdrawal of these rejections is respectfully requested.

c. No Motivation or Suggestion to Combine the Applied References

The present Office Action presents **no proof, and notably no evidence** whatsoever, of any "suggestion, motivation, or teaching in the prior art that would have led a person of ordinary skill in the art to":

1. "select the references";
2. "select the teachings of [the] separate references"; or

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3. “combine [those teachings] in the way that would produce the claimed” subject matter.

Moreover, the present Office Action presents **no proof, and indeed no evidence, of anything** “in the prior art as a whole to suggest the **desirability**, and thus the obviousness, of making the **combination**.” Instead, the present Office Action merely asserts, at Page 11, “it would have been obvious to an artisan to apply DeSimone’s teaching to Rogers’s system with the motivation being to provide real time interactive distribution of multimedia information using the multicast IP service.” Applicant respectfully submits that this unfounded assertion fails to provide any evidence of any “suggestion, motivation, or teaching in the prior art that would have led a person of ordinary skill in the art to”:

1. “select the references”;
2. “select the teachings of [the] separate references”; or
3. “combine [those teachings] in the way that would produce the claimed” subject matter.

d. Conclusion

For at least these reasons, a reconsideration and withdrawal of the rejection of claim 95 is respectfully requested.

72. Claim 96

a. *Prima Facie* Criteria

None of the applied portions of the references relied upon in the Office Action, whether considered alone or in combination, establish a *prima facie* case of obviousness. Since claim 96 depends from claim 81, Applicant incorporates by reference each traversal regarding claim 81, *supra*.

b. Missing Claim Limitations

Claim 96 states, *inter alia*, yet the applied portions of Rogers fail to teach, “providing a subscribed channel list for the subscriber that indicates channels which the subscriber is

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permitted to access". Instead, Rogers allegedly illustrates, at Fig. 7a, step 702, "SWITCH SENDS LIST OF AVAIL. **PROGRAMS**" (emphasis added). Applicant respectfully submits that a "list" of "programs" does not teach "channel list" according to how the word "channel" would be construed "in light of the specification" "by one of ordinary skill in the art". Moreover, the applied portion of Rogers is silent regarding any "subscribed" "list" whatsoever.

The applied portions of Day fail to cure at least these deficiencies of the applied portions of Rogers.

Thus, even if there were motivation or suggestion to modify or combine the applied portions of the references relied upon in the Office Action (an assumption that is respectfully traversed), and even if there were a reasonable expectation of success in combining or modifying the applied portions of the references relied upon in the Office Action (another assumption that is respectfully traversed), the applied portions of the references relied upon in the Office Action, **as attempted to be modified and/or combined**, still do not expressly or inherently teach **every** limitation of the independent claims, and consequently fail to establish a *prima facie* case of obviousness. Consequently, for at least the reasons mentioned above, reconsideration and withdrawal of these rejections is respectfully requested.

c. No Motivation or Suggestion to Combine the Applied References

The present Office Action presents **no proof, and** notably **no evidence** whatsoever, of any "suggestion, motivation, or teaching in the prior art that would have led a person of ordinary skill in the art to":

1. "select the references";
2. "select the teachings of [the] separate references"; or
3. "combine [those teachings] in the way that would produce the claimed" subject matter.

Moreover, the present Office Action presents **no proof, and** indeed **no evidence, of anything** "in the prior art as a whole to suggest the **desirability**, and thus the obviousness, of making the **combination**" regarding the additional subject matter of claim 96.

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d. Conclusion

For at least these reasons, a reconsideration and withdrawal of the rejection of claim 96 is respectfully requested.

73. Claim 97

a. *Prima Facie* Criteria

None of the applied portions of the references relied upon in the Office Action, whether considered alone or in combination, establish a *prima facie* case of obviousness. Since claim 97 depends from claim 81, Applicant incorporates by reference each traversal regarding claim 81, *supra*.

b. Missing Claim Limitations

Claim 97 states, *inter alia*, yet the applied portions of Rogers fail to teach, “wherein data for a channel is received at the computer system and forwarded to the subscriber unit”. Instead, Rogers allegedly illustrates, at Fig. 7a, step 702, “SWITCH SENDS LIST OF AVAIL. **PROGRAMS**” (emphasis added). Applicant respectfully submits that a “list” of “programs” does not teach a “channel” according to how the word “channel” would be construed “in light of the specification” “by one of ordinary skill in the art”.

The applied portions of Day fail to cure at least these deficiencies of the applied portions of Rogers.

Thus, even if there were motivation or suggestion to modify or combine the applied portions of the references relied upon in the Office Action (an assumption that is respectfully traversed), and even if there were a reasonable expectation of success in combining or modifying the applied portions of the references relied upon in the Office Action (another assumption that is respectfully traversed), the applied portions of the references relied upon in the Office Action, **as attempted to be modified and/or combined**, still do not expressly or inherently teach **every** limitation of the independent claims, and consequently fail to establish a *prima facie* case of obviousness. Consequently, for at least the reasons mentioned above, reconsideration and withdrawal of these rejections is respectfully requested.

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c. No Motivation or Suggestion to Combine the Applied References

The present Office Action presents **no proof, and** notably **no evidence** whatsoever, of any “suggestion, motivation, or teaching in the prior art that would have led a person of ordinary skill in the art to”:

1. “select the references”;
2. “select the teachings of [the] separate references”; or
3. “combine [those teachings] in the way that would produce the claimed” subject matter.

Moreover, the present Office Action presents **no proof, and** indeed **no evidence, of anything** “in the prior art as a whole to suggest the **desirability**, and thus the obviousness, of making the **combination**” regarding the additional subject matter of claim 97.

d. Conclusion

For at least these reasons, a reconsideration and withdrawal of the rejection of claim 97 is respectfully requested.

74. Claim 98

a. *Prima Facie* Criteria

None of the applied portions of the references relied upon in the Office Action, whether considered alone or in combination, establish a *prima facie* case of obviousness. Since claim 98 depends from claim 97, Applicant incorporates by reference each traversal regarding claim 97, *supra*.

b. No Motivation or Suggestion to Combine the Applied References

The present Office Action presents **no proof, and** notably **no evidence** whatsoever, of any “suggestion, motivation, or teaching in the prior art that would have led a person of ordinary skill in the art to”:

1. “select the references”;

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2. "select the teachings of [the] separate references"; or
3. "combine [those teachings] in the way that would produce the claimed" subject matter.

Moreover, the present Office Action presents **no proof, and indeed no evidence, of anything** "in the prior art as a whole to suggest the **desirability**, and thus the obviousness, of making the **combination**." Instead, the present Office Action merely asserts, at Page 13, "it would have been obvious to an artisan to apply Acharya's teaching to Rogers's system with the motivation being to provide transmits data as a series of variable length packets, each having a circuit number that identifies its source and destination address." Applicant respectfully submits that this unfounded assertion fails to provide any evidence of any "suggestion, motivation, or teaching in the prior art that would have led a person of ordinary skill in the art to":

1. "select the references";
2. "select the teachings of [the] separate references"; or
3. "combine [those teachings] in the way that would produce the claimed" subject matter.

c. Conclusion

For at least these reasons, a reconsideration and withdrawal of the rejection of claim 98 is respectfully requested.

75. Claim 99

a. *Prima Facie* Criteria

None of the applied portions of the references relied upon in the Office Action, whether considered alone or in combination, establish a *prima facie* case of obviousness. Since claim 99 depends from claim 81, Applicant incorporates by reference each traversal regarding claim 81, *supra*.

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b. No Motivation or Suggestion to Combine the Applied References

The present Office Action presents **no proof, and** notably **no evidence** whatsoever, of any “suggestion, motivation, or teaching in the prior art that would have led a person of ordinary skill in the art to”:

1. “select the references”;
2. “select the teachings of [the] separate references”; or
3. “combine [those teachings] in the way that would produce the claimed” subject matter.

Moreover, the present Office Action presents **no proof, and** indeed **no evidence, of anything** “in the prior art as a whole to suggest the **desirability**, and thus the obviousness, of making the **combination**.” Instead, the present Office Action merely asserts, at Page 12, “it would have been obvious to an artisan to apply DeSimone’s teaching to Rogers’s system with the motivation being to provide a conference to only the requested client.” Applicant respectfully submits that this unfounded assertion fails to provide any evidence of any “suggestion, motivation, or teaching in the prior art that would have led a person of ordinary skill in the art to”:

1. “select the references”;
2. “select the teachings of [the] separate references”; or
3. “combine [those teachings] in the way that would produce the claimed” subject matter.

c. Conclusion

For at least these reasons, a reconsideration and withdrawal of the rejection of claim 99 is respectfully requested.

76. Claim 100

a. *Prima Facie* Criteria

None of the applied portions of the references relied upon in the Office Action, whether considered alone or in combination, establish a *prima facie* case of obviousness. Since claim

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100 depends from claim 81, Applicant incorporates by reference each traversal regarding claim 81, *supra*.

b. Missing Claim Limitations

Claim 100 states, *inter alia*, yet the applied portions of Rogers fail to teach, “wherein the request is sent in response to the subscriber requesting to view the **listing**”. Since claim 100 depends from claim 81, “the listing” is a “listing of available channels”. Instead of teaching this claimed subject matter, Rogers allegedly illustrates, at Fig. 7a, step 706, “**SELECTED PROGRAM DISPLAYED IN WINDOW**” (emphasis added). Applicant respectfully submits that a “program” as recited in step 706 does not teach a “listing of available channels”.

The applied portions of Day fail to cure at least these deficiencies of the applied portions of Rogers.

Thus, even if there were motivation or suggestion to modify or combine the applied portions of the references relied upon in the Office Action (an assumption that is respectfully traversed), and even if there were a reasonable expectation of success in combining or modifying the applied portions of the references relied upon in the Office Action (another assumption that is respectfully traversed), the applied portions of the references relied upon in the Office Action, **as attempted to be modified and/or combined**, still do not expressly or inherently teach **every** limitation of the independent claims, and consequently fail to establish a *prima facie* case of obviousness. Consequently, for at least the reasons mentioned above, reconsideration and withdrawal of these rejections is respectfully requested.

c. No Motivation or Suggestion to Combine the Applied References

The present Office Action presents **no proof, and** notably **no evidence** whatsoever, of any “suggestion, motivation, or teaching in the prior art that would have led a person of ordinary skill in the art to”:

1. “select the references”;
2. “select the teachings of [the] separate references”; or

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3. “combine [those teachings] in the way that would produce the claimed” subject matter.

Moreover, the present Office Action presents **no proof, and indeed no evidence, of anything** “in the prior art as a whole to suggest the **desirability**, and thus the obviousness, of making the **combination**” regarding the additional subject matter of claim 100.

d. Conclusion

For at least these reasons, a reconsideration and withdrawal of the rejection of claim 100 is respectfully requested.

II. The Present Office Action Fails to Respond to All of Applicant’s Arguments

A proper Office Action must be complete as to all matters, must provide a clear explanation of all actions taken, and must answer in detail the substance of each of Applicant’s submitted arguments. *See* MPEP 707.07(f).

In response to an Office Action dated 22 March 2006, Applicant filed a proper Reply on 18 August 2006, which is incorporated herein by reference. In traversing a rejection of independent claims 25, 58, and 81, Applicant presented the following argument that stands unopposed in the present Office Action:

In addition, Applicant notes that claims 25, 58, and 81 recite “identifying the [or a][IP] multicast group assigned to each identified channel.” FIG. 7A, step 702 is cited in the Official Action for teaching this element of the claimed invention. However, step 702 merely provides for sending a “list of available programs,” and does not appear to relate to identifying a multicast group, as generally recited in the claims at issue. Similarly, while Day appears to provide for “joining multicast sessions,” (Col. 5, lines 63-65), nothing in Day teaches, suggests, or implies “identifying a multicast group assigned to each channel.”

The present Office Action fails to respond whatsoever to this previously presented and persuasive argument.

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For at least these reasons, Applicant respectfully requests the withdrawal of each of the rejections of independent claims 25, 58, and 81.

III. The Finality of the Office Action is Improper, Premature, and Should be Withdrawn

A proper Office Action must be complete as to all matters, must provide a clear explanation of all actions taken, and must answer in detail the substance of each of Applicant's submitted arguments. *See* MPEP 707.07(f).

Applicant respectfully submits that no *prima facie* rejection of any claim has been presented. Moreover, as stated, *supra*, the present Office Action fails to respond to all of Applicant's arguments presented in the Office Action Reply dated 18 August 2006.

For at least these reasons, Applicant respectfully requests that the finality of the 3 November 2006 Office Action be withdrawn.

In view of the foregoing amendments and remarks, Applicant submits that all of the claims are in proper format and are patentably distinct from the prior art of record and are in condition for allowance.

The Examiner is invited to contact the undersigned at the telephone number listed below with any questions concerning this application.

Respectfully submitted,



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